

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Friday, June 25, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m. Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(69).

Hon'ble Sir Samuel O'Donnell.	Rao Sahib Kunwar Sardar Singh.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.	Lieut. Raja Durga Narayan Singh.
Hon'ble Rai Rajeshwar Bali	Raja Sri Krishna Dutt Dube.
Hon'ble Thakur Rajendra Singh.	Rai Sahib Babu Dip Narayan Roy.
Hon'ble Nawab Muhammad Yusuf.	Rai Bahadur Thakur Hanuman Singh.
Mr. G. B. Lambert.	2nd-Lieut. Shihbzada Ravi Pratap Narayan Singh, Rai Bahadur.
Mr. E. A. H. Blunt.	Raja Indrajit Pratap Bahadur Sahi.
Kunwar Jagdish Prasad.	Babu Sita Ram.
Sir Ivo Elliott, Bart.	Kunwar Surendra Pratap Sahi.
Mr. P. H. Tillard.	Mr. Muhammad Aslam Saifi.
Mr. H. A. Lane.	Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. R. L. Yorke.	Mr. Muhammad Ismail Ali Khan.
Mr. R. Burn.	Maulvi Muhammad Obaid-ur-Rahman Khan.
Mr. A. W. Pim.	Dr. Zia-ud-din Ahmad.
Mr. B. J. K. Hallows.	Khan Bahadur Hafiz Hidayat Husain.
Mr. E. L. Norton.	Khan Bahadur Shaikh Masud-uz-Zaman.
Mr. H. G. Billson.	Khan Bahadur Mr. Muhammad Ismail.
Mr. R. J. S. Dodd.	Dr. Shafa'at Ahmad Khan.
Colonel A. W. R. Cochrane.	Saiyid Muhammad Ashiq Husain.
Mr. A. H. Mackenzie.	Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Mr. M. F. P. Herchenroder.	Khan Bahadur Hakim Mahbub Ali Khan.
Rai Bahadur Mr. A. C. Mukerji.	Khan Bahadur Munshi Siddiq Ahmad.
Raja Bahadur Brij Narayan Rai.	Qazi Habib Ashraf.
Mr. H. C. Desanges.	Khan Bahadur Chaudhri Muhammad Bashid ud-din Ashraf.
Babu Khem Chand.	Mr. St. George H. S. Jackson.
Babu Bhagwati Sahai Bedar.	Rai Bahadur Lala Mathura Prasad Mehrotra.
Chaudhri Jaswant Singh.	Raja Jagannath Bakhsh Singh.
Pandit Nanak Chand.	Mr. E. M. Souter.
Lala Babu Lal.	Mr. Tracey Gavin Jones.
Thakur Rajkumar Singh.	Dr. Ganesh Prasad.
Rai Amba Prasad Sahib.	
Rai Bahadur Pandit Kharagjit Misra.	
Chaudhri Badan Singh.	

MEMBERS SWORN.

Sir Ivo Elliott, Bart.
Mr. E. L. Norton.
Mr. M. F. P. Herchenroder.
Mr. E. M. Souter.
Rai Bahadur Mr. A. C. Mukerji.

QUESTIONS AND ANSWERS.

STARRED QUESTIONS.

CONSTITUTION OF MUNICIPAL AND DISTRICT BOARDS.

*1. **Khan Bahadur Hafiz Hidayat Husain** : Will the Government be pleased to lay two statements on the table compiled in the following form showing the constitution of both the municipal and district boards of these provinces separately after the elections of 1923 and 1924 respectively :—

[illegible]

Hon'ble Nawab Muhammad Yusuf: The statements are laid on the table.

(See Appendix A, pages 65 to 69.)

Khan Bahadur Hafiz Hidayat Husain: Will the Hon'ble Minister state the reasons as to why many nominations have not yet been made?

Hon'ble Nawab Muhammad Yusuf: Only a few nominations still remain to be made, as names in those cases have not been received from districts.

Khan Bahadur Hafiz Hidayat Husain : When do the Government expect to complete them ?

Hon'ble Nawab Muhammad Yusuf: Very shortly.

Pandit Nanak Chand : May I inquire how is it that in 66 municipal boards out of 85 no representative of the depressed classes has been nominated ?

Hon'ble Nawab Muhammad Yusuf: I would ask the honourable member to put his question a little later, as there are other questions with regard to this matter and it can easily be answered then.

CONSTITUTION OF TOWN AND NOTIFIED AREAS.

*2. **Khan Bahadur Hafiz Hidayat Husain:** Will the Government be pleased to lay a statement on the table compiled in the following form giving the particulars required concerning town and notified areas in these provinces :—

Name of notified or town area.	Population.						Numbers of Town or Notified Area Committee.					
	Hindu.	Muslim.	Indian Christian.	Depressed classes.	Others.	Total.	Hindu.	Muslim.	Indian Christian	Depressed classes.	Others	Total.
Lahaur												
Jhinjak												
etc., etc.												

Hon'ble Nawab Muhammad Yusuf: The information which is available is given in the statement placed on the honourable member's table.

(See Appendix B, pages 70 to 81.)

CHAIRMEN OF MUNICIPAL AND DISTRICT BOARDS.

*3. **Khan Bahadur Hafiz Hidayat Husain:** How many chairmen of municipal and district boards have been elected from outside the boards, i.e., from among persons who were not members of the board either by election or nomination, both in municipal and district boards since the Municipalities Act, 1916, and the District Boards Act, 1921, came into force? How many of these chairmen were Hindus and how many Muslims?

Hon'ble Nawab Muhammad Yusuf: The figures are given below :—

	Hindus.	Muslims.	Total.
Municipal boards	103	26	129
District boards	32	2	34

SHAHJAHANPUR DISTRICT BOARD.

*4. **Thakur Sadho Singh:** (a) How much money has been taken up for increasing the salaries of the various servants of the Shahjahanpur district board in each of the last three years, and at what rate or on what principle?

(b) How much yearly saving has been effected to the board by transfer of pucca roads?

(c) Is it a fact that a yearly saving of Rs. 7,000 or so will be effected after over two years, when the last instalment of the first loan for the Gurra bridge will be paid up, and another saving of Rs. 7,000 a year made

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available after further two or three years in payment of the remaining instalments of the other similar loan ?

(d) Is it a fact that a committee was appointed in June last to effect economy in excessive expenditure of the board, but it never met for the purpose ?

(e) What were the reasons ?

Hon'ble Nawab Muhammad Yusuf: (a) A statement giving the information is laid on the honourable member's table.

(b) About Rs. 6,000 a year.

(c) There will be a saving of Rs. 7,831 from the year 1927-28 and of the other amount after about eight years.

(d) No.

(e) Does not arise.

(See Appendix C, pages 82 and 83.)

*5 to 11. **Mr. Muhammad Aslam Saifi:** [Cf. Nos. 7 to 34 of April 8, 1926.]

Hon'ble the President: Under the Standing Orders the Hon'ble Minister must explain the reasons for delay.

Hon'ble Rai Rajeshwar Bali: We have asked for information from the Commissioner with regard to these questions and we have not yet received replies.

*12. **Mr. Muhammad Aslam Saifi:** (a) When was Sarwarjung's house at Lucknow acquired by the Improvement Trust ?

(b) For what amount ?

Hon'ble Sir Samuel O'Donnell: (a) The house was acquired by the Government and not by the Improvement Trust in 1922.

(b) Rupees 50,000.

*13. **Mr. Muhammad Aslam Saifi:** What use has the house been put to after being converted into a plot ?

Hon'ble Sir Samuel O'Donnell: The site was acquired for the construction of offices for several departments. For financial reasons construction has hitherto been postponed, but a beginning will probably be made in the near future with an office for the Registrar of Co-operative Societies.

DISMISSAL OF DISTRICT BOARD ENGINEER AND SUB-OVERSEER, BENARES.

*14. **Mr. Muhammad Aslam Saifi:** Will the Government be pleased to state if it is aware that the district board engineer of Benares, district board and also the sub-overseer have been dismissed by an ordinary resolution of the board ?

Hon'ble Nawab Muhammad Yusuf: The engineer and the sub-overseer were dismissed, but the former was subsequently reinstated.

Mr. Muhammad Aslam Saifi: May I ask if the engineer still happens to be reinstated or was dismissed afterwards ?

Hon'ble Nawab Muhammad Yusuf: He has been reinstated.

Mr. Muhammad Aslam Saifi : Has the Government made any inquiry as to why the sub-overseer was dismissed without framing proper charges ?

Hon'ble Nawab Muhammad Yusuf : The matter will be brought to the notice of the board.

***15. Mr. Muhammad Aslam Saifi :** Will the Government be pleased to state the circumstances under which this resolution was permitted to be moved ?

Hon'ble Nawab Muhammad Yusuf : The business on the agenda was to consider the report of the engineer on Anai middle school as asked by the board. The board was dissatisfied with the report and proceeded to dismiss its author and the sub-overseer.

***16. Mr. Muhammad Aslam Saifi :** Will the Hon'ble Minister in charge of Local Self-Government department be pleased to state if he is aware of the fact that the district board engineer, Benares district board, and his sub-overseer have been recently dismissed by an ordinary resolution of the board ?

Hon'ble Nawab Muhammad Yusuf : The honourable member is referred to the answer to starred question No. 14 of today's date.

***17. Mr. Muhammad Aslam Saifi :** Is he aware of the fact that the above resolution of the board was not placed on the agenda of the meeting and that it was moved without any notice ?

Hon'ble Nawab Muhammad Yusuf : The honourable member is referred to the answer to starred question No. 15 of today's date.

***18. Mr. Muhammad Aslam Saifi :** Is he aware of the fact that the chairman, district board, Benares, allowed the resolution to be moved ?

Hon'ble Nawab Muhammad Yusuf : Yes.

***19. Mr. Muhammad Aslam Saifi :** Is the Government aware of the fact that in the case of the engineer and his sub-overseer no inquiry was made, that there were no allegations against them, and that there was no chance given to the engineer or his sub-overseer for explanation of their conduct ?

Hon'ble Nawab Muhammad Yusuf : No inquiry was made; no charges were framed; no opportunity was given for explanation.

Panchayats.

***20. Pandit Govind Ballabh Pant :** Have any *panchayats* performed any function other than the disposal of petty cases? If so which and what? Of the total number of *panchayats* in this province, how many tried more than 100 cases during the last year and how many none at all? What was the average for a single *panchayat* ?

Hon'ble Nawab Muhammad Yusuf : Many *panchayats* have performed functions other than the disposal of petty cases, e.g. inquests into cases of suicide and suspicious death, investigation of thefts, cleaning or constructing or repairing wells and carrying out other sanitary works. Two hundred and eighteen *panchayats* tried more than 100 cases, while 635 tried no cases. The average for a *panchayat* is 27 cases.

DEPRESSED CLASS NOMINATIONS TO DISTRICT BOARD³.

*21. **Pandit Jhanni Lal Pande**: Will the Government be pleased to state how many persons nominated to the different district boards of the province are really members of the so-called depressed classes?

Hon'ble Nawab Muhammad Yusuf: Thirty-seven persons are really members of the so-called depressed classes.

REPRESENTATION OF SHIAS IN LOCAL BODIES.

*22 **Saiyid Muhammad Ashiq Husain**: Will the Government be pleased to state the total number of elected Muhammadan members in the municipal and district boards respectively of the United Provinces as well as the number of Shia Muhammadans comprised in the above totals?

Hon'ble Nawab Muhammad Yusuf: The total number of elected Muslim members in municipal and district boards is 364 and 356, of whom the number of Shias is 29 and 42 respectively.

*23. **Saiyid Muhammad Ashiq Husain**: Will the Government be pleased to state the number of Shias residing in the United Provinces and the proportion they bear to the total Muhammadan population of the whole province?

Hon'ble Nawab Muhammad Yusuf: Separate figures for Shias are not available.

*24. **Saiyid Muhammad Ashiq Husain**: Will the Government be pleased to consider the advisability of reserving its nominations to membership of municipal and district boards, wherever Muhammadans can be nominated or appointed, for members of the Shia community proportionately to their census strength and as representing the most important and distinct minority among the Muhammadans?

Hon'ble Nawab Muhammad Yusuf: Under the Act the Government are empowered to nominate two members. For one of the two seats the Government nominate a representative of the depressed classes when it is possible to secure a suitable representative. In making the other nomination the Government consider unrepresented interests when these are sufficiently important and also endeavour to secure members whose services are likely to be useful for the work of the board. The Government are not prepared to make any further reservation in their selection of this second member.

*25. **Saiyid Muhammad Ashiq Husain**: Is it a fact that Muhammadans comprise about one-fourth of the elected members in the local boards of the provinces? If so, will the Government consider the desirability of making its nominations from that sect of the Muhammadans who by reason of its numerical inferiority and essential differences of creed does not succeed as a rule in winning seats at municipal or district board elections as against members of the other—numerically stronger—sect?

Hon'ble Nawab Muhammad Yusuf: (a) The Muslim elected members are more than one-fourth of the total.

(b) The honourable member is referred to the answer given to starred question No. 24 of this date.

***26. Saiyid Muhammad Ashiq Husain:** Is the Government prepared to remove the inequalities under which the Shia community happens to labour at present by nominating its members to suitable seats on the local boards?

Hon'ble Nawab Muhammad Yusuf: The honourable member is referred to the answer given to starred question No. 24 of this date.

ELECTORAL ROLLS.

***27. Mr. Muhammad Aslam Saifi:** (a) Will the Government be pleased to state what was the total electoral roll for—

(i) non-Muslims,

(ii) Muslims,

in the seven city boards for the 1923 elections?

(b) What was it for the 1925 elections?

Hon'ble Nawab Muhammad Yusuf: A copy of the statement is furnished.

(See Appendix D, page 84.)

Mr. Muhammad Aslam Saifi: Has the Government noticed the disparity between the figures with regard to Meerut and Bareilly and will the Government be pleased to address an inquiry to the municipal boards concerned to find out the cause of this difference in the figures?

Hon'ble Nawab Muhammad Yusuf: Yes.

ELECTION OF CHAIRMAN, MUNICIPAL BOARD, ALLAHABAD.

***28. Mr. H. O. Desanges:** Will the Government be pleased to state whether any municipal board in the United Provinces has failed to elect a chairman in compliance with the provisions of section 43 of the United Provinces Municipalities Act or has elected a person not eligible for election and appointment?

If so, will the Government mention their names and be pleased to state what action has been taken or is proposed to be taken in the matter?

Hon'ble Nawab Muhammad Yusuf: Yes. The names of the municipal boards are Baraut, Meerut, Bahraich, Fatehpur, Kanauj, Tilhar and Etah. A chairman was appointed by Government or the Commissioner.

***29. Mr. H. O. Desanges:** Have the Government taken legal opinion as to the eligibility (or otherwise) of the civil government pleader of Allahabad for election as chairman of the Allahabad municipal board within the meaning of section 43 of the Municipalities Act?

If so, will the Government be pleased to lay the same on the table?

Has the attention of Government been invited to the definition of salary as given in—

(1) Imperial Act, II of 1886, section 3(4).

(2) Wharton's Law Lexicon,

(3) Webster's Dictionary,

(4) 1 Queen's Bench Division, page 529, by Lord Justice Bowen in *re Shim*,

and of *salaried servant of Government* as given in—

- (5) Bombay Municipal Act, III of 1921,
- (6) Bombay Local Boards Act, I of 1884, section 3 (3),

and of *salaried officer or salaries* in—

- (7) Bengal Local Self-Government Act, II of 1885, section 5,
- (8) Madras Local Boards Act, V of 1884,
- (9) Madras Municipal District Act, IV of 1884, and
- (10) Madras Municipal (City) Act, III of 1904, in this connexion?

Hon'ble Nawab Muhammad Yusuf: The answer to the first and third parts of the question is in the negative. The second part of the question does not arise.

*30. **Mr. H. C. Desanges:** Have the Government taken action under section 44 of the United Provinces Municipalities Act in any case in which no chairman has been elected or an ineligible person has been elected by any municipal board in contravention of the provisions of section 43 of the said Act?

Hon'ble Nawab Muhammad Yusuf: Yes.

LICENCES FOR BURMA MEAT TRADE.

*31. **Pandit Bhagwat Narayan Bhargava:** Will the Government be pleased to state the names of the municipal and district boards which have issued licences for drying of beef for Burma beef factory?

Hon'ble Nawab Muhammad Yusuf: Municipal boards of Muttra and Kunch and district boards of Moradabad, Shahjahanpur and Etawah.

DISTRICT BOARD TRAVELLING DISPENSARIES IN ALLAHABAD DIVISION.

*32. **Khan Bahadur Hafiz Hidayat Husain:** How many district boards, and which, in the Allahabad division abolished travelling dispensaries during the two years ending March 31, 1925? Did any of these boards start them afresh? What has been the result of the abolition of these dispensaries on the general health of the people?

Hon'ble Rai Rajeshwar Bali: All the boards of the Allahabad division abolished their travelling dispensaries on December 31, 1923, and none was re-opened.

NEW TAXATION UNDER DISTRICT BOARDS ACT.

*33. **Pandit Nanak Chand:** Will the Government be pleased to lay a statement on the table showing what steps, if any, have the various district boards taken in order to introduce new taxation under the District Boards Act, and what is the estimated income from the various proposals, and when are the various proposals going to be given effect to?

Hon'ble Nawab Muhammad Yusuf: The tax on circumstances and property has already been imposed in Lucknow, Meerut, Moradabad and Cawnpore. The proposals of Allahabad, Shahjahanpur, Fyzabad and Bulandshahr have been sanctioned and the date from which they will take effect has not yet been fixed. The proposals of Hardoi and Mirzapur are being matured. The estimate of the yield of the tax is

Rs. 40,000 in Lucknow, Rs. 70,000 in Moradabad and Rs. 30,000 in Cawnpore. The information regarding the estimated income in other places is not available.

MUMFORD TENNIS CLUB, BULANDSHAHR.

*34. **Pandit Nanak Chand:** (i) Is it a fact that there is a tennis club at Bulandshahr named after Mr. Mumford, late district magistrate, of which a number of Indian gazetted and non-gazetted Government officials, a certain number of members of the Bar and local gentry are members?

(ii) Is it a fact that the municipal board, Bulandshahr, has allowed the use of part of the ground in Moti Bagh for the use of the Mumford tennis club, and the club maintains the ground?

(iii) Is it a fact that the municipal board got the playground of the tennis club fenced with iron wires at a cost of about Rs. 250 to prevent trespass on the playground by men and cattle?

(iv) Is it a fact that the Commissioner, Meerut division, has vetoed the resolution of the board regarding the wire fencing of the playground? If so, for what public reason?

(v) Are municipal boards prohibited from incurring such expense for protecting places meant for the amusement and recreation of the residents of a municipal area?

(vi) Is it proposed by the order of veto that the board should remove the wire fencing? If not, what action is contemplated?

Hon'ble Nawab Muhammad Yusuf: (i) Yes.

(ii) Yes.

(iii) Yes.

(iv) Yes. Expenditure in the fencing of the playground of a private club is not a legitimate charge on municipal fund.

(v) The objects on which a municipal board is authorized to spend its fund are specified in sections 7 and 8, Municipalities Act, and the Government do not propose to express an opinion whether the expenditure will be covered by these sections.

(vi) No. No action is contemplated.

TOWN HALL, BULANDSHAHR.

*35. **Pandit Nanak Chand:** (i) Will the Government be pleased to state the time since when the district magistrate has taken over charge of the town hall, Bulandshahr, from Bulandshahr municipal board?

(ii) Since when had the municipal board been maintaining the said town hall?

(iii) Why was the municipal board deprived of the control and maintenance of the town hall?

(iv) When and on what conditions, if any, is the town hall proposed to be restored to the municipal board, Bulandshahr? If the reply be in the negative, then how is it proposed to control and maintain the town hall?

(v) What were the objects for which the town hall was built by Raja Baqar Ali Khan of Pandrawal?

Hon'ble Nawab Muhammad Yusuf: (i) August 15, 1925.

(ii) 1885.

(iii) Because the municipal board neglected the building and also because the board prohibited the district board from holding its meetings in the hall according to established practice.

(iv) The town hall will not be restored to the municipal board. It will be maintained by Government and controlled by a committee consisting of the collector as president and the chairmen of the municipal and district boards, Bulandshahr.

(v) The town hall was built for the general needs of the district, in particular for the purpose of holding useful public meetings.

Pandit Nanak Chand: Will the Government consider the advisability of transferring the control of this town hall to some purely non-official committee?

Hon'ble the President: That does not arise out of the question on the notice paper.

ACCOMMODATION FOR BAR, PARTIES AND WITNESSES AT BASTI.

*36. **Maulvi Abdul Hakeem:** Has the Government provided the members of the Bar in any district with a common room at its own expense, and, if so, in what places?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: The Bar Associations of Lucknow, Bahraich, Bara Banki and Hamirpur occupy portions of the court buildings which are not required for Government purposes without payment of any rent.

*37. **Maulvi Abdul Hakeem:** (a) Is the Government aware that there is no shed or house in the civil court compound at Basti for witnesses or parties such as are provided in other places by the Government for them?

(b) Is it the intention of the Government to provide a common room for the members of the Bar and a shed for parties and witnesses?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: (a) Yes.

(b) No; there are sheds for parties and witnesses only in a few places.

NOTIFIED AREA, DIBAI, BULANDSHAHR.

*38. **Pandit Nanak Chand:** (a) Is it a fact that some representative Hindus of Dibai waited upon the Commissioner, Meerut division, and submitted their representation and memorial in this connexion regarding excessive representation to the Muslim minority population in the Dibai notified area?

(b) Is it a fact that the Commissioner accepted the recommendation of the district magistrate and appointed Hatim Ali as president?

(c) Will the Government be pleased to state if the Collector and the Commissioner made any inquiries into the allegations against Hatim Ali, or asked for further proof in their support?

(d) Will the Government be pleased to state if it is a fact that Hindus of Dibai pay about Rs. 40,000 as land revenue as against about Rs. 10,000 paid by Muslims and contribute about Rs. 6,000 as against about Rs. 1,000 by Muslims to the notified area funds and about Rs. 6,000 income-tax as against about Rs. 100 only by the Muslims?

(e) Will the Government be pleased to state what steps, if any, they propose to take to redress this grievance of the Hindu public of Dibai ?

Hon'ble Nawab Muhammad Yusuf : (a) Yes.

(b) Yes.

(c) Yes.

(d) The revenue and taxes paid by Hindus and Muslims are given below :—

				Land Revenue.	Notified area tax.	Income-tax.
				Rs.	Rs.	Rs.
Hindus	..	..	..	36,769	7,036	4,550
Muslims	..	..	..	10,683	1,236	1,197

(e) The Government have no power to set aside a nomination already made and can take no steps.

DISTRICT HEALTH SCHEMES AND HEALTH OFFICERS.

*39. **Pandit Nanak Chand :** (a) In how many districts are the district health schemes working ?

(b) How many transfers of district and assistant health officers took place in each district in 1923 to 1925 ?

(c) In how many cases were these transfers made at the instance of the district boards ?

(d) How many transfers were made without consulting the district boards, and what were the general grounds for these transfers ?

Hon'ble Rai Rajeshwar Bali : (a) Sixteen.

(b) Nine.

(c) In no cases.

(d) Eight. The general grounds for transfer was the interest of the public service. One transfer was made on the abolition of a post, three transfers were made on the introduction of the health scheme in new districts, one transfer was to fill a vacancy, two transfers represent an exchange between two districts, two transfers were made on appointment to other districts.

*40. **Pandit Nanak Chand :** (a) Is it a fact that no assistant health officer has been appointed in Benares district health scheme ?

(b) If so, what it is due to ?

(c) When, if at all, is the appointment likely to be made ?

Hon'ble Rai Rajeshwar Bali : (a) Yes.

(b) The district of Benares is exceptionally small.

(c) No appointment is contemplated.

*41. **Pandit Nanak Chand :** (a) Is it the district boards, or the Government, or the Government in consultation with district boards who determine the head-quarters of health officer, assistant health officer, sanitary inspectors in each district where the scheme is introduced ?

(b) On what grounds generally are these head-quarters required to be selected ?

Hon'ble Rai Rajeshwar Bali : There are no such orders. The district head-quarters are the head-quarters of the district medical officers of health and the assistant district medical officer, except in the case of Deoria. The head-quarters of sanitary inspectors are the tahsil head-quarters.

*42. **Pandit Nanak Ohand :** (a) What are the qualifications and length of service of the health officer of Benares municipality and when was he appointed to his present job ?

(b) Are there any officers senior in service with British qualifications attached to second class municipalities ?

(c) Is the Government aware of the feeling of disappointment among the latter officers ?

Hon'ble Rai Rajeshwar Bali : (a) The medical officer of health, Benares, possesses the following qualifications :—

- (1) Doctorate of Public Health of the John Hopkins Medical School, United States of America.
- (2) M. R. C. P. of Edinburgh.
- (3) D. T. M. and H. of London, and
- (4) M. B. B. S.

The length of his service up to date in the Public Health department is eleven months, fifteen days. He had nearly nine years' previous Government service in the Medical department. He was appointed his present post on April 16, 1925.

(b) Yes.

(c) No.

Mr. Muhammad Aslam Saifi : Is the degree of D. P. H. as given by the John Hopkins Medical School recognized by the Medical Council of England ?

Hon'ble Rai Rajeshwar Bali : I believe it must be; it is a very high degree.

Dr. Ganesh Prasad : Is the Hon'ble Minister aware that Dr. Hargovind Dayal Mathur is a man of exceptional qualifications and that there is no Doctor of Public Health in the whole of the United Provinces ?

Hon'ble Rai Rajeshwar Bali : Yes, I know.

*43. **Pandit Nanak Ohand :** (a) In how many cases and places and for what periods did assistant district health officers officiate as district health officers when the latter proceeded on leave or on malaria training ?

(b) Did the officiating officers work satisfactorily ?

(c) What was the rate of officiating allowance given to them ?

Hon'ble Rai Rajeshwar Bali : (a) and (b) The district medical officers of health, Basti, Gorakhpur, Deoria, Fyzabad, Gonda and Azamgarh were deputed to Banbasa for anti-malarial training for about two months in 1924. The district medical officer of health, Ballia, was on

leave from October 23, 1925 to November 25, 1925, and under anti-malarial training for about six weeks during the current year. During these periods the assistant district medical officers of health carried on the routine duties of district medical officers of health in their respective districts.

(c) No officiating allowance was admissible.

*44. **Pandit Nanak Chand:** (a) Did Moradabad and Budaun municipalities or their chairmen ask for the services of Muslim officers of public health?

(b) If so, was their request granted by removal of Hindu officers? If so, in how many cases?

Hon'ble Rai Rajeshwar Bali: (a) and (b) In Moradabad this was unofficially suggested. In Budaun after the municipal board had proposed to abolish the medical officer of health and after the Hindu medical officer had applied for his transfer the chairman asked for a suitable Muslim officer. The Hindu officer was transferred and a Muslim officer appointed.

*45. **Pandit Nanak Chand:** (a) Have any officers not possessing any public health qualifications been appointed as district officers of public health in any districts? If so, in what districts?

(b) Have such officers worked as satisfactorily as the officers with public health qualifications?

(c) If the answer to part (b) be in the negative, will the Government try the experiment of appointing L. P. H. officers for as long as qualified D. P. H. officers become available?

Hon'ble Rai Rajeshwar Bali: (a) Yes. In the districts of Gonda, Jaunpur, Ghazipur, Bahraich, Allahabad, Mirzapur, Moradabad, Sultanpur, Bara Banki and Partabgarh.

(b) They have worked as satisfactorily as could be expected owing to their lack of experience and technical knowledge. These officers are all candidates for the D. P. H. classes and were only employed on their undertaking to undergo the necessary training in the D. P. H. class, when called upon to do so. They are thus gaining experience of the actual work they will eventually have to do, which is all to their advantage and to Government. This arrangement is more suitable than the alternative suggested in (c).

*46. **Pandit Nanak Chand:** (a) Is the assistant to special plague research officer qualified in public health or plague work?

If the answer to part (a) be in the negative, do Government approve of the present arrangement or propose to appoint an officer qualified in public health specially experienced in plague work until a D. P. H. officer is available?

Hon'ble Rai Rajeshwar Bali: (a) No. The post is only a temporary one and no qualified candidates could be spared.

(b) As the plague research work will continue for a few months only and the present incumbent has gained experience, no change in the present arrangement is considered necessary.

(b) On what grounds generally are these head-quarters required to be selected ?

Hon'ble Rai Rajeshwar Bali : There are no such orders. The district head-quarters are the head-quarters of the district medical officers of health and the assistant district medical officer, except in the case of Deoria. The head-quarters of sanitary inspectors are the tahsil head-quarters.

***42. Pandit Nanak Chand :** (a) What are the qualifications and length of service of the health officer of Benares municipality and when was he appointed to his present job ?

(b) Are there any officers senior in service with British qualifications attached to second class municipalities ?

(c) Is the Government aware of the feeling of disappointment among the latter officers ?

Hon'ble Rai Rajeshwar Bali : (a) The medical officer of health, Benares, possesses the following qualifications :—

(1) Doctorate of Public Health of the John Hopkins Medical School, United States of America.

(2) M. R. C. P. of Edinburgh.

(3) D. T. M. and H. of London, and

(4) M. B. B. S.

The length of his service up to date in the Public Health department is eleven months, fifteen days. He had nearly nine years' previous Government service in the Medical department. He was appointed his present post on April 16, 1925.

(b) Yes.

(c) No.

Mr. Muhammad Aslam Saifi : Is the degree of D. P. H. as given by the John Hopkins Medical School recognized by the Medical Council of England ?

Hon'ble Rai Rajeshwar Bali : I believe it must be ; it is a very high degree.

Dr. Ganesh Prasad : Is the Hon'ble Minister aware that Dr. Hargovind Dayal Mathur is a man of exceptional qualifications and that there is no Doctor of Public Health in the whole of the United Provinces ?

Hon'ble Rai Rajeshwar Bali : Yes, I know.

***43. Pandit Nanak Chand :** (a) In how many cases and places and for what periods did assistant district health officers officiate as district health officers when the latter proceeded on leave or on malaria training ?

(b) Did the officiating officers work satisfactorily ?

(c) What was the rate of officiating allowance given to them ?

Hon'ble Rai Rajeshwar Bali : (a) and (b) The district medical officers of health, Basti, Gorakhpur, Deoria, Fyzabad, Gonda and Azamgarh were deputed to Banbasa for anti-malarial training for about two months in 1924. The district medical officer of health, Ballia, was on

leave from October 23, 1925 to November 25, 1925, and under anti-malarial training for about six weeks during the current year. During these periods the assistant district medical officers of health carried on the routine duties of district medical officers of health in their respective districts.

(c) No officiating allowance was admissible.

*44. **Pandit Nanak Chand :** (a) Did Moradabad and Budaun municipalities or their chairmen ask for the services of Muslim officers of public health ?

(b) If so, was their request granted by removal of Hindu officers ? If so, in how many cases ?

Hon'ble Rai Rajeshwar Bali : (a) and (b) In Moradabad this was unofficially suggested. In Budaun after the municipal board had proposed to abolish the medical officer of health and after the Hindu medical officer had applied for his transfer the chairman asked for a suitable Muslim officer. The Hindu officer was transferred and a Muslim officer appointed.

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(b) Have such officers worked as satisfactorily as the officers with public health qualifications ?

(c) If the answer to part (b) be in the negative, will the Government try the experiment of appointing L. P. H. officers for as long as qualified D. P. H. officers become available ?

Hon'ble Rai Rajeshwar Bali : (a) Yes. In the districts of Gonda, Jaunpur, Ghazipur, Bahraich, Allahabad, Mirzapur, Moradabad, Sultanpur, Bara Banki and Partabgarh.

(b) They have worked as satisfactorily as could be expected owing to their lack of experience and technical knowledge. These officers are all candidates for the D. P. H. classes and were only employed on their undertaking to undergo the necessary training in the D. P. H. class, when called upon to do so. They are thus gaining experience of the actual work they will eventually have to do, which is all to their advantage and to Government. This arrangement is more suitable than the alternative suggested in (c).

*46. **Pandit Nanak Chand :** (a) Is the assistant to special plague research officer qualified in public health or plague work ?

If the answer to part (a) be in the negative, do Government approve of the present arrangement or propose to appoint an officer qualified in public health specially experienced in plague work until a D. P. H. officer is available ?

Hon'ble Rai Rajeshwar Bali : (a) No. The post is only a temporary one and no qualified candidates could be spared.

(b) As the plague research work will continue for a few months only and the present incumbent has gained experience, no change in the present arrangement is considered necessary.

***47. Pandit Nanak Chand :** (a) How many second class municipalities have third class health officers?

(b) Do Government intend to consult D. P. H. officers to go to such municipalities.

Hon'ble Rai Rajeshwar Bali : (a) One. A third class medical officer of health is officiating in Dehra Dun for the permanent incumbent, Dr. R. S. Varma, I. R. C. P. and S (EDIN.), who is at present sitting for his final D. P. H. examination. The third class medical officer of health was appointed as it was short leave vacancy only.

(b) The intention of the honourable member is not clearly understood.

MUNICIPAL TAXES.

***48. Pandit Bhagwat Narayan Bhargava :** Will the Government be pleased to state the number of municipalities in which (a) house or building tax is in force, (b) a municipal tax on income is in force, (c) both these taxes or none of them or some other tax is in force which is the basis for being qualified as a municipal elector?

Hon'ble Nawab Muhammad Yusuf : (a) The number of municipalities in which a house or building tax is the the only direct tax is three.

(b) The number of municipalities in which a tax on circumstances and property or a tax on trades, callings or vocations is the only direct tax is 31.

(c) The number of other municipalities in which a direct tax is levied is 48.

***49. Pandit Bhagwat Narayan Bhargava :** Will the Government kindly state the lowest and the highest amount of income which has been fixed as the minimum for assessing municipal tax in the municipalities of the United Provinces?

Hon'ble Nawab Muhammad Yusuf : The lowest and the highest amounts fixed as a minimum are Rs. 25 and Rs. 1,000, but one figure cannot be compared with the other, for the minimum varies according to the nature of the tax.

NOMINATIONS TO MUNICIPAL AND DISTRICT BOARDS, SULTANPUR, PARTHAGARH AND RAE BAREIL.

***50. Shaikh Abdus Samad Ansari :** (a) Was the name of any Muhammadan gentleman suggested along with that of Thakur Abhai Dut Singh for nomination to the district board of Sultanpur in 1925? If so, what is the name of the Muhammadan gentleman?

(b) What were the qualifications of the Muhammadan gentleman and of Thakur Abhai Dut Singh, who has been nominated to the district board of Sultanpur?

(c) What were the grounds upon which Thakur Abhai Dut Singh was given preference over the Muhammadan gentleman referred to above?

Hon'ble Nawab Muhammad Yusuf : (a) Yes. The name of the Muhammadan gentleman is Honorary Captain Sardar Bahadur Karam Sher Khan.

(b) Both are honorary magistrates and pensioned officers of the Army.

(c) Thakur Abhai Dut Singh was considered to be suitable for appointment.

*51. **Shaikh Abdus Samad Ansari**: (a) Has any Muhammadan gentleman been nominated to be a member of the municipal and the district boards of Sultanpur, Partabgarh and Rae Bareilly ever since 1916?

(b) If so, what is his name?

(c) If not, why not?

Hon'ble Nawab Muhammad Yusuf: (a) A Muhammadan gentleman was nominated as member of Rae Bareilly municipal board, but not to the other boards.

(b) The name of the gentleman is Captain Ali Muhammad Khan.

(c) The persons who were considered suitable were nominated.

VILLAGE PANCHAYATS IN SULTANPUR, PARTABGARH AND RAE BAREILLY.

*52. **Dr. Ganesh Prasad**: Will the Government be pleased to state the number of village *panchayats* established in the districts of Sultanpur, Partabgarh and Rae Bareilly?

Hon'ble Nawab Muhammad Yusuf: The number of village *panchayats* established in the districts is—

Sultanpur	...	...	...	205
Partabgarh	..	...	...	90
Rae Bareilly	...	...	...	49

*53. **Dr. Ganesh Prasad**: What is the number of cases decided by these *panchayat* during the last three years?

Hon'ble Nawab Muhammad Yusuf: The number of cases decided by the *panchayats* in these districts is—

			1922-23.	1923-24.	1924-25.
Sultanpur	...	...	193	744	1,232
Partabgarh	...	...	438	478	774
Rae Bareilly	...	...	1,230	1,447	1,479

*54. **Dr. Ganesh Prasad**: Has there been any decrease in the number of cases tried by the honorary and stipendiary magistrates in any of the past years after this system was introduced?

Hon'ble Nawab Muhammad Yusuf: No.

*55. **Thakur Sadho Singh**: [Answered on April 8, 1926.]

*56 to *63. **Thakur Har Prasad Singh**: [Cf. Nos. *1 to 8 of April 1, 1926.]

Khan Bahadur Shaikh Masud-uz-Zaman: What is the reason for this delay? The question was put some time in March and information has not yet been collected.

Hon'ble Nawab Muhammad Yusuf: Since the honourable member requires very detailed information, the authorities are making deep inquiries into it.

Khan Bahadur Shaikh Masud-uz-Zaman : Is it a fact that the information supplied by the chairman of the municipal board was considered by the district magistrate as inaccurate and evasive and therefore the papers have been returned for further information?

Hon'ble Nawab Muhammad Yusuf : The question does not arise.

POLITICAL PRISONER THAKUR AHBARAN SINGH.

*** 64. Thakur Sadho Singh :** (a) What is the present condition of the health of Thakur Ahbaran Singh, the political prisoner in Agra central jail?

(b) How far has he regained the considerable loss of weight suffered by him since it was reported to the Council last time in December, 1925?

(c) Is it a fact that the term of his principal sentence of two years' imprisonment expired in December last?

(d) Is it a fact that he is undergoing imprisonment of additional six months in default of payment of fine of one hundred rupees?

(e) How many times was attachment made of his property and how much has been recovered yet?

(f) Is it intended to remit the fine and order his release now?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : (a) Good.

(b) Up to the date of report—March 19, 1926—the prisoner's weight remained the same as in December, 1925.

(c) The substantive sentence of imprisonment expired on January 10, 1926.

(d) Yes.

(e) Attachment was made once. Nothing was recovered.

(f) He has served out his sentence as there were no grounds for remitting the fine or ordering his release.

NOMINATIONS TO DISTRICT BOARDS.

*** 65. Thakur Sadho Singh :** (a) How many nominees of the Government to district boards are selected from cities and on what principle? What interests do they represent?

(b) Have these nominees been instructed to keep in touch with rural areas sufficiently?

Hon'ble Nawab Muhammad Yusuf : Forty-seven nominated members of district boards are believed ordinarily to reside in municipal areas. They have been chosen because they are likely to give effective help in carrying out the duties of the district boards, and their interests are by no means confined to the place of their residence. The duties of all members of the district board keep them in touch with rural area, and it is not necessary to give special instructions to nominated members.

PAY OF DISTRICT BOARD STAFF OF SHAHJAHANPUR AND OTHER DISTRICTS OF THE ROHILKHAND DIVISION.

*** 66. Thakur Sadho Singh :** (a) What lump increases in the pay of individuals serving in the head-quarter's staff of the district board of

Shahjahaupur were effected during the last three years and for what reasons? What other increments were allowed to each of other members of the staff?

(b) What increase of pay was allowed to each member of the head-quarter's staff, in other districts of Rohilkhand during the last three years, and on what principle or for what reasons?

Hon'ble Nawab Muhammad Yusuf : A copy of the reports received from the district boards is laid on the honourable member's table.

(See Appendix E, pages 85 to 88.)

UNSTARRED QUESTIONS.

IMPROVEMENT TRUST, LUCKNOW.

1. **Khan Bahadur Maulvi Fasih-ud-din :** Will the Government be pleased to state if the Improvement Trust of Lucknow has constructed a vegetable market from public funds, and at what cost?

Sir Ivo Elliott : Yes. The cost is Rs. 90,205.

2. **Khan Bahadur Maulvi Fasih-ud-din :** Has the whole market been leased out? If so, to whom, for what sum, and for how many years?

Sir Ivo Elliott : Yes. The market has been leased to Messrs. Chunni Lal and Jagannath Prasad Attly, railway fruit and sweet contractors, for six years at a rent of Rs. 4,500 for the first year, Rs. 5,500 for the second year, Rs. 5,830 for the third year, Rs. 6,180 for the fourth year, Rs. 6,550 for the fifth year and Rs. 6,943 for the sixth year, on the condition that the contractors are given a renewal of the lease for a further period of four years at a rent which it fetches at auction at the expiry of the sixth year.

3. **Khan Bahadur Maulvi Fasih-ud-din :** Has the lessee sub-let the market to shop-keepers? If so, how many of the sub-lessees are Hindus and how many Muhammadans?

Sir Ivo Elliott : Yes. At present there are 22 sub-lessees all of whom are Hindus and 20 stalls are empty. None of the sub-lessees are Muhammadans as they have boycotted the market.

4. **Khan Bahadur Maulvi Fasih-ud-din :** Was the ordinary practice of calling for tenders in such cases observed by the honorary chairman, Babu Biseshwar Nath Srivastav, in this particular case?

Sir Ivo Elliott : No. It is not customary to call for tenders in such cases, but efforts were made by Trust officials for several months to induce suitable persons to make offers for the lease.

5. **Khan Bahadur Maulvi Fasih-ud-din :** Is it a fact that a number of expensive plots in the Lucknow town were purchased by the Improvement Trust fund within the last five years and could not be utilized for any public purpose as yet?

Sir Ivo Elliott : No. The only instance of this nature is the purchase of the old Flour Mills near the Iron Bridge, particulars of which are given in reply to question No. 6.

6. **Khan Bahadur Maulvi Fasih-ud-din**: Will the Government be pleased to supply information about those plots in the following form:—

- (a) situation of the plot;
- (b) area of the plot;
- (c) cost of the plot;
- (d) purpose of the purchase;
- (e) date of the purchase;
- (f) reasons for not utilizing it?

Sir Ivo Elliott: (a) On the Bagh Shahji road near the Iron Bridge between that bridge and the metergauge railway.

- (b) B 6,17,411.
- (c) Rupees 1,50,000, including buildings.
- (d) Purchased for the University.
- (e) March 27, 1920.
- (f) The University subsequently decided not to build in that area.

DISTRICT BOARD RECORDS IN HINDI.

7. **Rao Sahib Abdul Hameed Khan**: (a) Is it a fact that certain district boards have sanctioned the measure of keeping their records in Hindi?

(b) Will the Government be pleased to give the names of such district boards, if any?

(c) If such has been the case in some district boards, will the Government be pleased to state what action have they taken upon this?

Sir Ivo Elliott: (a) and (b) The boards of Almora, Jalaun and Fatehpur have decided to keep their records in Hindi. Hamirpur and Farrukhabad keep their records in Hindi and Urdu. Azamgarh proposes to use Hindi and Urdu. Allahabad keeps files in both Hindi and Urdu. Etawah and Mainpuri use Hindi for their pound registers.

(c) The Government have not taken any action.

8. **Pandit Nanak Chand**: [Cf. No. 18 of March 26, 1926.]

SUB-REGISTRARS.

9. **Pandit Nanak Chand**: Will the Government be pleased to give the number of Hindu, Muslim and Christian sub-registrars with the total number of sub-registrars in the provinces? And the number of sub-registrars recruited during the last two years from each community (a) by nomination and (b) by selection?

Sir Ivo Elliott: The total number of sub-registrars is 186, of whom 94 are Hindus, 90 Muslims and two Christians. During the last two years five Hindus and five Muslims were recruited by nomination and three Hindus and one Muslim by selection.

10 to 12. **Khan Bahadur Maulvi Fasih-ud-din**: [Cf. Nos. 16 to 18 of March 27, 1926.]

13. **Khan Bahadur Maulvi Fasih-ud-din**: (1) How many nazul cases were instituted in civil court by the Lucknow nazul department during the last six years?

(2) What was their cost and their result?

Sir Ivo Elliott: (1) 148.

(2) Their cost amounted to Rs. 7,140-10-2. Seventy-seven cases were decreed after contest, seventeen were decreed on compromise; seven were withdrawn, 25 were dismissed and 22 are pending.

RETRENCHMENT IN VARIOUS DEPARTMENTS.

14. **Khan Bahadur Maulvi Fasih-ud-din** : Will the Government be pleased to state how many Government servants were removed from their posts in connexion with the retrenchment scheme in the Revenue, Judicial, Police, Forest, Industries and Excise departments during the past four years ?

15. How many of those servants belonged to the menial, clerical and superior gazetted staff respectively ?

16. How many of the reduced servants were given re-employment elsewhere, how many of them were given reduced pension, and how many of them were left completely unprovided for ?

Mr. E. A. H. Blunt : A statement is laid on the honourable member's table.

(See Appendix F, page.89.)

RESIGNATION OF CHAUBE RAJA RAM, HEAD PANCH, PINAHAT, AGRA.

17. **Rai Bahadur Pandit Kharagjit Misra** : (a) Has Chaube Raja Ram, head *panch*, town area, Pinahat, district Agra, tendered resignation of his office ?

(b) If so, what reasons has he given in his resignation ?

Sir Ivo Elliott : (a) Yes.

(b) He considered that the town magistrate was uncivil to him.

18. **Rai Bahadur Pandit Kharagjit Misra** : (a) Has the Government made any inquiry if the allegations made in the resignation are correct ?

(b) If not, will the Government do so now ?

Sir Ivo Elliott : (a) An inquiry was made by the district magistrate.

(b) The Government does not consider any further inquiry to be necessary.

PUBLIC HALL, DEHRA DUN.

19. **Pandit Nanak Chand** : With reference to answers to starred questions Nos. 78 A to 78 D, dated January 19, 1926, will the Government be pleased to state the constitution of the public hall committee and place the grounds on which the Commissioner declined to sanction the lease on the table ?

Sir Ivo Elliott : There is no formally constituted public hall committee at Dehra Dun. Certain persons formed themselves into a committee and began to collect subscriptions for the erection of a statue to Mr. Tilak. Subsequently they wished to substitute a hall for a statue. The Commissioner under the power delegated to him by the nazul rules declined to sanction a lease of nazul land for this purpose in favour of a collection of individuals.

NUMBER OF SLAUGHTER-HOUSES AND ANIMALS SLAUGHTERED.

20. **Pandit Nanak Chand** : Will the Government be pleased to give the number of slaughter-houses in the United Provinces (a) for local consumption and (b) for dry meat trade ?

Sir Ivo Elliott : (a) 452.

(b) 18.

21. Pandit Nanak Ohand : With reference to the answer to unstarred question No. 20, dated January 22, 1926, will the Government be pleased to state the purposes of slaughter of cattle other than the slaughter for dry meat and local consumption?

Sir Ivo Elliott : The Government know of no other purpose.

TOWN AREA, BASTI.

22. Bhaya Hanumat Prasad Singh : Will the Government be pleased to lay on the table a statement showing the area, annual income and population of the Basti town area according to the census of 1921?

Does the Government contemplate to turn the above town area into a notified area?

If so, by what time is it expected?

Sir Ivo Elliott : The area of the town is not known, but it is about four miles north and south and about two miles east and west. The income during 1924-25 was Rs. 20,061 and population 17,691. The Government agree with the local opinion that the proposal for converting town area into a notified area may be postponed for the present.

GOURA-BARHAJ NOTIFIED AREA, GORAKHPUR.

23. Rai Sahib Babu Dip Narayan Roy : (1) Will the Government be pleased to state whether it is a fact that the elected members of the Goura-Barhaj notified area in Gorakhpur district elected a president on December 17, 1925? Is it true that the Government have forced another chairman upon them? Is this order of the Government contrary to G. O. No. 2506/XI—56-N (Municipal department), dated May 23, 1926, to the Commissioner, Gorakhpur division?

(2) If the answer be in the affirmative, will the Government be pleased to state what were the reasons that led to the taking of such a step?

Sir Ivo Elliott : The elected members elected a chairman, but the election was invalid. Owing to the acute faction in the notified area and complicated issues between the committee and the Majhauri estate, the Government have decided that the committee should have an official chairman. This decision is not contrary to G. O. No. 2506/XI—56-N., dated May 23, 1926.

OBJECTIONS TO ENTRIES IN MUNICIPAL ELECTORAL ROLLS.

24. Pandit Nanak Ohand : (a) Will the Government be pleased to lay a statement on the table showing the number of objections filed for the correction of municipal electoral rolls with the number of objections admitted for the last municipal general election in each municipality in the province?

(b) What steps, if any, do Government intend to take to ensure better preparation of the municipal electoral rolls?

Sir Ivo Elliott : (a) A statement is laid on the table.

(b) The matter is receiving the attention of the Government

(See Appendix G, pages 90 and 91.)

THE LATE RAI BAHADUR BABU SHANKAR DAYAL.

Hon'ble the President : Since we met last we have had a domestic loss in the death of one of our members, namely, Rai Bahadur Babu Shankar Dayal of Partabgarh. Few of us knew that his end was so near. In fact none of us realized that he was so sick as to be taken away from us so early in life and so full of life. At times honourable members know that he was original in his contributions to the debates of this House and he was almost always lively in his contributions to our proceedings. It is a matter of great regret that he should have been snatched away from us so early, and I am sure that I carry the wishes of the whole House with me in the expression of this regret and sympathy with the family of the deceased.

PANEL OF CHAIRMEN.

Hon'ble the President : I appoint the following members to form a panel of chairmen as provided by rule 3 of the United Provinces Legislative Council rules for the ensuing session :—

- (1) Rai Bahadur Babu Vikramajit Singh.
- (2) Mr. St. George H. S. Jackson.
- (3) Mr. Mukandi Lal.
- (4) Khan Bahadur Mr. Muhammad Ismail.

ANNOUNCEMENT OF ASSENT TO ACTS.

Hon'ble the President : I have to announce that the United Provinces District Boards Primary Education Act, I of 1926, which was passed by the United Provinces Legislative Council on February 25, 1926, and assented to by His Excellency the Governor on March 23, 1926, received the assent of His Excellency the Governor General on April 21, 1926.

I have also to announce that the United Provinces Municipalities (Amendment) Act, II of 1926, which was passed by the United Provinces Legislative Council on April 6, 1926, received the assent of His Excellency the Governor on May 12, 1926.

THE AGRA UNIVERSITY BILL.

Hon'ble Rai Rajeshwar Bali : I beg to introduce the Agra University Bill.

Dr. Ganesh Prasad : I rise to say a few words.

Hon'ble the President : Does the honourable member wish to oppose the introduction of the Bill ?

Dr. Ganesh Prasad : I wish to support it.

Hon'ble the President : Then the honourable member should make his remarks later on. Here, I am afraid, they are out of order.

Hon'ble Rai Rajeshwar Bali : I beg to move that the Agra University Bill be referred to a select committee consisting of—

- (1) Dr. Ganesh Prasad.
- (2) Dr. Zia-ud-din Ahmad.
- (3) Rai Bahadur Mr. A. C. Mukerji.
- (4) Mr. A. H. Mackenzie.
- (5) Rai Bahadur Babu Vikramajit Singh.
- (6) Khan Bahadur Hafiz Hidayat Husain.
- (7) Pandit Nanak Chand.
- (8) Kunwar Jagdish Prasad.
- (9) The Legal Remembrancer.

I also move that the select committee be asked to report by July 15, 1926.

Sir, the Agra University Bill has got a little history behind it, and when you, Sir, occupied a less exalted position you played no inconspicuous part in shaping that history. Hence I am sure that you will watch the proceedings relating to this Bill with more than usual interest.

It was on February 27, 1923 that you, Sir, moved the fateful resolution for the establishment of a university at Agra, which was opposed by my distinguished and illustrious predecessor, the then Minister for Education—I mean Mr. C. Y. Chintamani. I call that resolution fateful, as it led to the solitary instance in our provinces during the last five years and a half when a Minister in the transferred departments sustained a defeat on an important question of policy. Being myself a witness of that memorable occasion my impressions are still quite fresh; and though I, in my humble way, contributed to the defeat of the Government on that day, I remember the manner in which the courageous stand of my predecessor for his convictions against the wishes of the majority of the House and the forceful statement which he subsequently made evoked our keen admiration and respect.

In January, 1924, hardly three weeks after I had taken over charge of my office, a resolution similar in effect was moved by my friend, the Pro-Vice-Chancellor of the Aligarh Muslim University. I had the privilege of accepting that resolution on behalf of the Government, and it was adopted by the Council.

The Agra University Bill is the fruit of much careful deliberation and discussion, not only by the committee which was appointed in pursuance of the Council resolution, but also by the academic bodies who were consulted by Government. The committee appointed by Government to draft the provisions to be incorporated in the Bill consisted of members representative of all the interests concerned. Their proposals were subsequently scrutinized by the Council of Associated Colleges and the Executive Council of the Allahabad University and were published in the *Government Gazette* with a view to eliciting public opinion and criticism. The Government in drafting the Bill have given due weight to the suggestions received from all quarters.

The question of establishing an affiliating university at Agra has during the two years it has been before the public evoked criticism of a somewhat conflicting nature. On the one hand we have heard the opinion that it is in the best interests of the unitary teaching and residential university of Allahabad that there should be a separation between the internal and external sides, the forced union of which has, it is said, hampered progress and led to friction. On the other hand there is the view that it is not in the best interests of higher education to multiply universities any further, since, in the first place, the province has not the resources to maintain so many of them in an efficient condition, and, secondly, the multiplication leads to a deterioration of standards. There is also a third group of critics who urge that the establishment of a university of the affiliating type in modern days is an anachronism. I will deal with the three kinds of criticisms in detail. There is no doubt that there is a strong body of educationists in our province who consider that the external side of the Allahabad University is a dead weight which is impeding its development in the direction chalked out for it by its constitution. And the best testimony of this has come from those who may be said to constitute the Allahabad University itself. In the annual report of the working of the University for the year 1923-24 the Vice-Chancellor said :—

“The hybrid constitution and the complicated machinery are hampering it at each stage of its progress. The methods devised for its smooth working have led to entirely contrary results.”

The Allahabad University perceived the danger which threatened it, and before the question was moved in the Legislative Council in 1924, a resolution was passed by the Council of Associated Colleges at its meeting on November 21, 1923, which was as follows :—

“That in the opinion of this Council it will be to the best interests of university education both at Allahabad and throughout the province that the external colleges at present associated with the University of Allahabad should be completely separated from that university, leaving it for the future a purely unitary teaching and residential university for Allahabad; and that the colleges thus separated should be reorganized to form a separate university having its head quarters at Agra; and the Council requests Government to initiate such amendments to the Allahabad University Act, 1921, and such new legislation as will effect these reforms should be undertaken at an early date.”

The Executive Council of the Allahabad University at its meeting, held on January 5, 1924, considered what further action should be taken in regard to the resolution of the Council of Associated Colleges. It resolved that the resolution should be forwarded to Government with a favourable recommendation; provided that, if the external side is cut off, it should be without prejudice to the finances and development of the teaching university. At the next meeting of the court, held on November 21, 1924, a resolution asking for the postponement of the establishment of the Agra University was lost by an overwhelming majority. Thus it is evident that the consensus of opinion in the university circles is in favour of giving complete freedom to the Allahabad University to work out its own destiny unlogged and unfettered.

[Hon'ble Rai Rajeshwar Bali.]

I will now deal with the question of the multiplication of universities, their strain on the financial resources of the province and their effect on educational standards. The recurring charges for the establishment of the Agra University to the tax-payer will be, if any, very small. It has been calculated that in the first year it will be the modest sum of Rs. 10,476, and that from the second year it will be self-supporting. And the multiplication of universities does not necessarily lead to a relaxation of standards. Each of the four universities of the province stands for its own ideal which it endeavours to work up to; as they grow and develop into maturity, their characteristic features will become more marked. The Agra University is not intended to enter into competition with them. It merely relieves the encumbered Allahabad University of a share of its burden and helps it to move more freely along the lines laid down for it. The alleged multiplication is therefore nominal. It is true that a new name will be added to the list of universities in these provinces, but there will be no multiplication of functions, for the establishment of a university at Agra only mean in effect the transfer of the external side of the Allahabad University from Allahabad to Agra.

Moreover, it will be found that we have been anxious to provide sufficient safeguards in the Bill against the tendency to lower standards. There will be in the first place a board of inspection to guard against promiscuous affiliations. It will make arrangements for the periodical inspection of affiliated colleges. Its constitution and powers have been incorporated in the Bill so that they cannot be modified subsequently. The conditions of affiliation, which are of a sufficiently stringent nature, have been laid down in the first statutes. Secondly, under clause 19(2), the Academic Council has been made responsible for the maintenance of proper standards both of teaching and of examinations. Thirdly, clause 31 (3) provides in each examination for at least one examiner, who will not be a teacher in any affiliated college, for each subject in which there is more than one examiner.

Sir, considerable emphasis has been laid by some critics on the fact that we are giving a fresh lease of life to the affiliating type of university which was condemned by educational experts and which was supposed to be given a ceremonial burial by the educational reforms of 1921. But let us examine for a moment the position which was given to the associated colleges in that scheme. So far as I am aware, it was contemplated that each one of those outlying colleges, or at least the majority of them, that were capable of development would gradually develop into university colleges and thus become potential centres of teaching universities to be created at some future date. But so long as the province was not in a position to create so many teaching universities, these colleges were bound to be affiliated to some university body or other. It is not a vital matter whether the body which affiliates them possesses a separate entity for itself or whether it assumes the shape of an affiliating university inside a teaching one. But the affiliating type is there all the same.

Therefore, to my mind the real crux of the problem in the scheme of educational reform *vis-à-vis* the outlying colleges was not whether their affiliating authority was to be situated at Agra or Allahabad, but it was whether they were to be allowed their existence as degree colleges

or not. Here we have to face stern facts. I think I am not far wrong when I say that the non-official opinion in the province both among educational and non-educational circles is still not prepared to confine and limit all higher education to the four centres of Allahabad, Lucknow, Benares and Aligarh. I admit that as an ideal it would be much better if we could do so, but even the authors of the reforms and their most enthusiastic supporters clearly saw the infeasibility of the proposition and knew that its enforcement would arouse a storm of opposition throughout the whole province. If we turn to the debates on your resolution of February 27, 1923, we shall find speaker after speaker emphasizing the fact that there was not the slightest intention of affecting adversely the associated colleges and evincing an earnest desire to ensure their existence and rights. My honourable predecessor, the harbinger of the reforms, was fully conscious of the limitations of this country with its "vast distances and a population of limited means" and was unwilling to curtail the existing facilities for education to the "aspiring youth of the country." The then member for the Allahabad University, Pandit Iqbal Narain Gurtu, was sure that these colleges were not to close because of the greater demand for higher education, particularly with the growth of new intermediate colleges. And Pandit Hriday Nath Kunzru went so far as to say that "no Minister who tried to enforce the policy of killing the outlying colleges and concentrating education at one centre would be safe in his position for a day." All this leads to one conclusion, that even from the beginning it was clear that at least a majority of these colleges were to continue to exist and to give instruction to degree classes. But since then there have been further indications of the support which these colleges have received both from educationists and non-educationists, for they appear to have markedly gained in strength since 1921. The Allahabad University itself, together with the representatives of the internal side, is responsible for giving affiliation to many of them in higher degrees and in a larger number of subjects. I will not trouble the House by reading a list of them, but I find that no less than 26 recognitions have been given to the various colleges in various subjects. Not content with that, I learn that the Executive Council of the Allahabad University have agreed to raise the status of the Christ Church College, Cawnpore, from an intermediate to a degree college. It will also be found that the expenditure over these associated colleges has risen from Rs. 3.51 in 1920-21 to Rs. 6.30 in 1926-27. Certainly only a portion has come from increased Government grants; the rest has been met by the public. No better indication of the trend of public opinion could be found than in the facts I have just enumerated. Thus, in short, the outlying colleges must continue to live till at least such time as the province is ripe for the transformation of these colleges into teaching universities. This will only happen when the Intermediate Education Act has fully achieved its aims and the teaching universities have established their unchallenged superiority as centres of higher education. In order to accelerate the speed of this process it is necessary that the University of Allahabad should be allowed to advance without the drag of the associated colleges, while the colleges should not be tied unwillingly to the wheels of the teaching university. By shifting the centre of authority of the associated colleges from Allahabad to Agra freedom will be conferred on both. It will evoke local patriotism and local enthusiasm in the interests of the

[Hon'ble Rai Rajeshwar Bali.]

colleges and they will be speeded on the way which leads to the goal, namely, teaching and residential universities. Let us hope in the meantime that there will be keener appreciation of, and a wider demand for, higher education in the province which will lead to the development of the colleges into universities of distinctive types.

But while discussing the necessity, due to our peculiar circumstances, of retaining the affiliating type—to be called by whatever name you like and to be situated wherever you please—there is one more point which I wish to make and emphasize. By a perusal of the Bill before us it will be found that the Agra University is not to be an affiliating university of the old type; it will be one of a reformed type sharing the advantages of the old and the new model in a consistent manner. While effort has been made to avoid the narrowness and officialism that characterized the old purely examining universities of India, scrupulous care has been taken in drafting the Bill to ensure that there may be no friction or complexity in the working of the university machinery. The principal governing bodies have been designed on a thoroughly representative basis, where public opinion could find its fullest expression. The Vice-Chancellor will be an honorary officer to be elected by the Senate, and executive functions have been assigned to a body which will include representatives of the affiliated colleges both in the United Provinces and outside. Along with the power of affiliation of new colleges it has been made possible to develop teaching and residential universities at new centres in course of time, and in order, further, to obviate the defects of a purely affiliating and examining university, power has been given to employ teachers for the purpose of supplementing the work of teaching and research in affiliated colleges. This will enable the university to combine the functions of a teaching and affiliating university in one and the same corporate body in a manner likely to be productive of good to all the affiliated institutions.

I cannot close without referring to one important question of policy, I mean the question of intermediate education in relation to the Agra University. There are two points involved in it. In the first place according to the Allahabad University Act of 1921 the permission to continue intermediate classes in associated colleges side by side with the degree and post-graduate classes was limited to five years—a period which is on the point of expiry. In the new Bill this permission is not fettered by any limitation of time. We have only said “until such time as the Local Government shall direct”, but I still hold that for at least some time to come we are inextricably committed to the policy of the Intermediate Education Act, namely, the policy of the separation of the degree from intermediate classes, but owing to financial considerations we have not been able to enforce the five years’ proviso on the associated colleges. Whenever we find ourselves in a position to compensate these colleges for the financial loss which they may have to suffer on account of the separation and whenever we are able to provide facilities for intermediate education at these centres where these associated colleges are situated, we do propose to carry through the reform contemplated in the Allahabad University Act. Then, Sir, it is advocated in certain quarters that the Agra University should have power to control and conduct its own intermediate examination. In my opinion no more effective blow could be designed to kill the Intermediate Education Act

than this retrograde proposal. If there are defects in the Act, let us look into them by all means. As a matter of fact a committee is already doing so. But to set up a rival authority and to curtail the jurisdiction of the Board of High School and Intermediate Education would undermine the great reform so recently carried out without giving it sufficient trial. With these words I commend the Bill to the sympathetic consideration of the House. Let me hope that it will leave the Allahabad University free to steer its course unhampered by the consideration of the needs of institutions external to itself; that it will strengthen the associated colleges and relieve them from their anxieties about their future, and that it thus will generally advance the cause of higher education in our provinces. I am only sorry that my friends, the members of the Swarajist party, are not here today to assist us in our deliberations, for whatever their attitude might have been in regard to other departments, so far at any rate as the transferred departments are concerned we have always found them to be helpful.

Mr. Gavin Jones : I feel that I must oppose the reference of the Agra University Bill to the select committee. My first reason for doing so is on the ground of finance. The Hon'ble Minister has taken pains to tell us that this university is going to cost an infinitesimal sum. This is all very well; but when the university is established there will be demands for further grants. We have the instance of the Benares Hindu University before us. When it was first brought before the public we were told that not a penny was going to be spent by the Government. Even now the Benares University is asking for a lakh of rupees from the Government. This is inevitable. You cannot run a University without further expenditure. We are spending in this province Rs. 1,70,00,000 on education, of which a large proportion is being spent on higher education. The population of this province is 50 millions or thereabouts and the literate population, which includes vernacular literates, is only about a million. I think four Universities are quite sufficient for a million literate population. The very large expenditure which is incurred on education is quite sufficient for this province and is as much as it can bear. I do not think we should run any risk of further expenditure. No more universities should be started which cannot be run efficiently without more expenditure.

We spend on agricultural development 25 lakhs in a year—an infinitesimal sum. The money that is available for transferred subjects is limited, and in my opinion education is getting far too much. I have great belief in education, but it is a subject which is very much misunderstood. There is a widespread opinion that education is a mere matter of book learning. Now book learning is a small part of education. In fact it is a dangerous possession unless it is accompanied by a training in stability, common sense, toleration, self-restraint and respect for others. These are qualities which are acquired in many ways, and for our Universities to convey these qualities they must have plenty of finance to keep them in an efficient position, and we do not want to make education cheap. The Hon'ble Minister said that he would be very careful to see that the multiplication of universities does not deteriorate the quality. But if you increase the quantity and divide the resources, the quality must deteriorate. You cannot help it. We do not want to emulate Bengal where you have a very large number of so-called educated people, a large number of whom are unemployed and unemployable. We want

[Mr. Gavin Jones.]

to have men turned out of our universities of the best quality, and therefore we should restrict our resources to the universities that we now have, and put all we can into them.

Not very long ago a proposition was put before this House that a university should be started in Cawnpore. I opposed that proposal on the same principle, and I oppose the Agra University Bill. On that occasion the proposal was turned down by the House, and I hope this Bill will also be turned down.

Pandit Nanak Chand : I thought that the reference of this Bill to select committee would not meet with any opposition by the members of this House. But I find that my friend Mr. Gavin Jones has thought it fit to oppose it. It is well known that ever since this question was taken up in the first reformed Council, I have consistently supported it. What had led me to believe that the Bill would be referred to a select committee without any opposition was due to the fact that this proposal had not only been accepted by the first reformed Council, but that resolution was confirmed by this Council as well on the resolution of my friend Dr. Zia-ud-din Ahmad Sahib. The grounds on which my friend Mr. Jones has opposed this proposal are neither convincing nor weighty. The first ground that he urged was of finance. The Hon'ble Minister in his speech has already pointed out that in the first year about Rs.10,000 will be required to initiate the university and from the second year of its life even that small amount will not be required. Then it was urged that when the university is going, it will demand money from the Government and the general tax-payer will have to bear the burden. But if it is not the policy of Government and the Legislative Council to shut down the associated colleges, the Government will have to shoulder their own responsibility which they owe to these old colleges. We can by no means think of allowing the Government or the Legislative Council to wipe off these colleges, or to reduce them to the status of intermediate college, and so long as they exist the Government are bound to give them the grants to which they are entitled and the Government will have to continue to give these grants whether these colleges continue to be associated as constituents of the external side of the Allahabad University or as affiliated colleges of the Agra University that is proposed to be brought into being. My friend Mr. Jones cited the case of the Benares Hindu University. At the time the Benares University was constituted it was thought that that university being an all-India university it will be properly financed by the Government of India to the extent that its needs had to be met by Government funds. It may be due to the lack of sympathy on the part of the Government of India, or it may be due to the lack of funds, that we find that the Benares Hindu University is not able to pay its way in spite of very substantial non-official contributions. The Benares University is supplying a great want in our province. From year to year it is educating quite a large number of students belonging to these provinces, and had it not been for this university it would have been the business of this province and the Government to provide increased facilities or more institutions for their education. If for that singular service that the Benares University is rendering they come and request the Government to help them by a grant of a lakh a year, I think that the request is not unreasonable.

My friend Mr. Jones next pointed out that the four universities which are already in our province are quite enough, but I may remind him that two of these universities are all-India universities and they do not cater exclusively for the needs of these provinces—they have to give education to students who come from outside as well.

I was surprised to hear from my friend that education is getting far too much. Our political future itself depends on our education. It is one of the conditions advanced against our claims that India is not fit for self-government as it is not sufficiently educated. When we demand more institutions and more money for education, some of our friends say that education is getting too much. On the one side opponents of our claims hold that we cannot be trusted with further constitutional advance because we are not educated; on the other hand some of our friends say that our education is getting too much and it should get less. It has been pointed out by Mr. Jones that mere book learning is not education. I agree with him. But it appears that he failed to hear the remarks of my friend the Hon'ble Minister when he said that the university that is proposed to be brought into being at Agra will not be a mere copy of the old affiliating university: he pointed out that there are provisions in the Bill which will ensure that the affiliating university will have some of the features and advantages of a unitary teaching university as well. It is quite possible that we may find that we are slavishly copying western countries in discarding the affiliating universities altogether, without making an attempt to adapt them to the changed conditions. Even in an advanced country like England they have not done away altogether with affiliating universities. Perhaps they found themselves in a position where they could not do away with some of those old established universities, just as we find ourselves in a position where we cannot do away with century-old colleges like the Agra College and St. John's College. We have to adapt these institutions to the growing needs of the time, and I am sure, if the Government and the public co-operate, this university will not be a mere affiliating and examining university, but it will provide means for supplementing education for the affiliated colleges on behalf of the university.

My friend Mr. Jones has pointed out that we should not emulate Bengal, where they have been laying too much stress on quantity, with the result that the quality of their students is deteriorating. But it is the province of Bengal which is outshining all other provinces in the matter of research and of higher education. Unless you have a broad-based foundation, you cannot expect a very fine superstructure at the top. The question of unemployment in Bengal is no ground that we should not go ahead with our education, irrespective of the fact whether our youths find employment or not. It is absolutely a different issue. We ought to so adapt our education as to fit our youths to find openings for themselves, to fit them better for facing the struggle of life. But there is no ground for saying that, since increased facilities for education will create the problem of unemployment among the educated people, we ought to devise means to discourage and prevent further expansion of education.

With these few words I give my whole-hearted support to the motion for reference of the Bill to the select committee.

Dr. Zia-ud-din Ahmad: I thank the Hon'ble Minister and the Secretary of the Education department and the Director of Public Instruction for laying this very important Bill before the Council. We have been nervous for the last several months, not knowing of the secrets of the Government, that perhaps their intention was to let the time of this Council pass away and the next Council, when it comes, may perhaps decide the question. But I think our misapprehension was only on account of the fact that we did not know of the things which were behind the curtain. I am sure now that the delay was not due to the laziness of the department, but it was due to certain facts over which our department had no control.

The one very important thing which led me to move the resolution last time and on account of which I welcome this Bill, is that the present system in the Allahabad University of combining the teaching and the affiliating sides together is very unnatural. It is neither good for the teaching side of the Allahabad University, nor is it good for the mufassil colleges which are affiliated to the Allahabad University. It is very desirable that the teaching university should be a teaching university and nothing else, and the affiliating university ought to be established independent of the teaching university. The Calcutta University Commission no doubt recommended, on account of the special circumstances that existed in Bengal, that for a temporary period the two functions of the university, that is the examining and the teaching side, may be combined. But the Commission contemplated very clearly that this arrangement should only be temporary, and the time should soon come when the affiliating part should be separated from the Calcutta University, either in the form of an affiliating university under the name of the University of Bengal or by resolving it into three, or four, or five teaching universities. Of course, they made no secret of it when they recommended this temporary arrangement. They said that it is very necessary that the teaching side should be separated from the examining side of the affiliating university as soon as possible.

Now, we introduced the Allahabad University Act at a time when the attention of practically all the educationists was directed to save their respective institutions. We were in the midst of non-co-operation and were subject to the criticisms of all the non-co-operators. Therefore, our attention at that time was directed mostly to save our institutions, to keep ourselves in existence, and we paid absolutely no attention to the Intermediate Board Act or the Allahabad University Act, which was passed, unfortunately, at that time. I will come to this later on.

Now, after a few years' working of the Allahabad University, the teaching side as well as the mufassil colleges both found that the arrangement of the Allahabad University Act was very unnatural. The mufassil colleges thought that the authorities of the university paid almost exclusive attention to the teaching side of the university, and ignored the natural aspirations of the mufassil colleges, which they thought ought to receive more care and attention from what we may call their foster-mother. Now, it was on account of this desire both on the part of the teaching university of Allahabad and on the part of the mufassil colleges that it was considered necessary to separate the two organizations.

I come just now to one or two criticisms raised by Mr. Jones. The first objection which he raised was the objection of cost. Of course, I

also use the same argument in favour of the creation of the Agra University, because I have mentioned several times that the cost of education in a teaching university is two and a half times the cost of education in an affiliated college. So, if we establish an affiliating university independent of the teaching university, the cost would be reduced and not increased.

The second point which Mr. Jones raised, and I entirely agree with him on this point, was that in India, unfortunately, the true meaning of education is not understood. Its education is equivalent to instruction or book-learning. I entirely agree with him that it is very unfortunate that in India the people pay exclusive attention to book-learning and do not pay sufficient attention to all the four or five different things like development of character, development of judgement, common sense and various other things, which are an integral part of education and these defects are entirely ignored.

Now, I do not want to give a sermon and to be a pedagogue at this moment and to tell you all the characteristic differences between instruction and education, but I will confine myself to saying that a person who may be entirely ignorant, who may not be able to read and write, may be called an educated man. Therefore we must always differentiate between instruction and education. If Mr. Jones is willing to carry out propaganda with a view to change the ideal of education, I assure him that I will very willingly accept his lieutenantship and will be his right lieutenant in carrying out this propaganda. I assure the members of the Government on one side and the public on the other, also the parents and pupils, that education does not mean instruction and instruction alone. It means something else. Now side by side as a corollary to this propaganda, Mr. Jones will have to raise cudgels against the misleading notion which is prevalent everywhere, that the efficiency of an institution, according to the Director of Public Instruction, is judged by the number of failures in the examination and it is not judged by the number of persons turned out by such an institution. If you read the criticisms that are reported in the *Leader* and if you go to any other place, you will find that efficiency is not measured by the number of failures in the examination. I think that is an ideal which is peculiar to this country. It is peculiar to India alone and it does not exist in any country outside India. If you go anywhere you will find that if a student has failed in any examination, say in Germany, then it is not really a censure to the student. It is really a censure to the professor. If any student has failed in Germany, it is not the student but the professor who always feels very shy and shows a very poor face among his colleagues. If a student has failed, and if it is from an affiliated college, then the censure is on the staff and not only upon the student, and this thing becomes exceedingly difficult in the case of the teaching university when you are deliberately going to say that efficiency will be judged by the number of failures which you will show in the results. If you succeed in failing 60 per cent. of your pupils whom you have taught for two years, then you are an efficient examiner and an efficient university. But if you happen to teach them very efficiently with the result that only 20 per cent. of the students fail, then you are really very inefficient, you are really a machine to pass graduates. Therefore side by side I request Mr. Jones to raise his cudgel and to promote the ideal that the success of an institution ought to be judged

[Dr. Zia-ud-din Ahmad.]

by the number of students turned out by the university, by the work which they do and not by the number of failures which this institution might wish to make exclusively. If he succeeds in bringing about such a change in the ideal of education he will be doing Iyeoman's service to the cause of education. I again repeat that if he carries out this propaganda, I will be very willing to be his right hand lieutenant.

The next point which was raised by the Hon'ble Minister was about the equalization of standards. This is also a very difficult question. This question is as difficult in India as it is difficult in any other country. I ask the Hon'ble Director of Public Instruction to compare the standard of the Scottish universities with the universities of Oxford and Cambridge. Compare the standard of Midland universities with other universities. Every university has got its own ideals, its own traditions, its own methods of teaching and its own examinations. It is exceedingly difficult to compare the standards of universities in any country whatsoever, and India is no exception to it. The thing which is radically wrong in India, on account of which all these difficulties have arisen, is that, unfortunately, the Government takes these university degrees as a passport for their service. Since they take it as a passport for service, naturally they are anxious that the kind of commodity they get from the universities must be according to their requirements, and it is on account of this fact that they put their nose into things which are no business of theirs. I wish that they should take up the whole question directly and not indirectly. They should institute their own examinations and their own methods for recruitment of candidates for service and leave the universities alone. If any university lowers its standards, then naturally the students of that university will not be qualified for Government service and very few students will go to that university, and it will be automatically condemned both by students and their parents. It is possible that they may not be brilliant graduates from the point of view of examinations, but they may be excellent for carrying on the work in various departments of Government and various phases of life, and, if so, that university will be very popular. The students of that university will always have great demands for them and they will always like to attach the hall-mark of that university to themselves. This is the only way in which universities can raise up and keep a very high standard, and the method which is being adopted by the department and backed up by the leading Indian newspaper of these provinces.

Dr. Ganesh Prasad : Question ?

Dr. Zia-ud-din Ahmad : I agree with the honourable gentleman and I withdraw the word "leading."

This method will not achieve the required object. It is really a propaganda that is meant against those institutions which are not favoured institutions. I should repeat once more, with your permission, Sir, that the only way in which this question can be satisfactorily solved is that Government should institute its own examinations for recruitment of candidates for service and leave the universities alone to confer degrees in any manner they like. I do not mean to say that Government should keep absolutely silent whenever there is anything wrong, but they have sufficient powers under the Act to take action whatever they think necessary.

Now, the next thing to which I would like to draw the attention of this honourable House is the Vice-Chancellor. The Vice-Chancellor according to this Bill shall be responsible for the discipline of the students. The Allahabad University before it was reorganized was modelled on the recommendations of Lord Curzon's Commission of 1902. The experience of twenty years' working of that university has proved that it was not less efficient than any other university in India. That constitution worked exceedingly well and there was no defect in it whatsoever. As a matter of fact, whenever we discuss the working of any university or of any Intermediate Board, we take the working of the old Allahabad University as our ideal. In the old Allahabad University the Vice-Chancellor was appointed by the Chancellor and he was an honorary officer holding office for two years, but he was not responsible for the discipline of students. We are now imposing an additional duty upon him, namely, that he is to be responsible for the discipline of students as well, and it therefore appears that it will not be possible to have a person who may be entirely honorary and at the same time to be able to look after the students. Therefore the provisions of the Bill about the powers and duties of the Vice-Chancellor require consideration. I think the Vice-Chancellor should receive certain remuneration which the Executive Council may determine. That is, we should not exclude the possibility of having entirely an honorary person, but they should also be in a position to give a certain allowance to the Vice-Chancellor.

There is also a second point in which there is a great change. Under the Allahabad and the Lucknow University Act (this was also the case in the old Allahabad University) the Vice-Chancellor is appointed by the Chancellor in the old days entirely by him and in modern times from among persons recommended by the Executive Council. I think we ought to follow, specially in the case of affiliating universities, this particular provision. I think the Vice-Chancellor ought to be appointed by the Chancellor from among the persons recommended by the Executive Council. This provision is exceedingly important in the case of affiliating universities, because if there be a rivalry among various colleges and if there be an unhealthy competition between the different institutions, then the only saving feature at that time will be the Vice-Chancellor and his appointment ought to be independent of the Senate and the Executive Council; it should depend entirely upon the Chancellor and the Government, who after all are finally responsible for the good working of the university.

Further, I would like, through you, Sir, to draw the attention of the committee which has just been appointed to the point that they may look into the provisions relating to the Vice-Chancellor again and consider the two points whether the Vice-Chancellor may receive such remuneration as the Executive Council may determine and whether he may be appointed in the same manner as we have fixed for the Dacca and Lucknow Universities.

The other provision which also requires consideration is that the Bill gives unlimited power to the Vice-Chancellor to delegate his powers to any person he likes. This is a very dangerous procedure. We make him responsible for the discipline of the students and then we tell him that he may delegate his powers to any person and he may wander about in the country.

[Dr. Zia-ud-din Ahmad.]

These are the points that I would request the select committee to consider carefully. I would certainly request the Government not to exclude from the discussion all these things, because they are matters on which the future smooth working of the university largely depends.

The other thing about which I am not clear after reading the Bill is whether the Bill contemplates that students will be permitted to appear privately in the degree examinations without attending lectures. If one were to read section 4 (2) (c) and section 4 (4) it gives the impression, I do not know whether rightly or wrongly, that the university may permit any and every student to appear privately in any degree examination, B.A., M.A., and even L.I.B., without attending lectures. If this is right it will be a very strange innovation, I would say a very dangerous innovation, because no university up to this moment has ever allowed any candidate who has not undergone a regular course of studies at a recognized institution to appear privately for its degree examinations, except teachers who may be working in those institutions.

The next point about which I at least am not very clear after reading the Bill—perhaps some member of the Government may clear up this point—is about the limits of the Aligarh, Benares, Allahabad and Lucknow Universities. The limits are not very clear in some cases, and I do not know whether the Ewing Christian College at Allahabad can be affiliated to the Agra University or whether, in future the Government or any other body establish a college either at Benares, Aligarh or Lucknow, that college can be affiliated to the Agra University. I think this is a point which really requires a clear provision; the existing provisions are not very lucid and create some doubts as to the real intention of the Bill.

Now, the period of office of the Registrar is also omitted. It is very desirable that some provision should be made in this behalf. He should not hold office indefinitely, as there is no such provision laid down in any University Act.

There is one point to which I may refer in connexion with this Bill, and that is about the system of appointment of examiners. The machinery which the Bill has provided is that the Board of Studies which will be created—I do not know what will be the number of the members—will nominate certain persons. The Executive Council may either approve or may change those names. Now, this method of appointment of examiners has not worked satisfactorily in the Intermediate Board. I think the Director of Public Instruction cannot deny these facts, that is, that this requires a little change. The best system that worked very satisfactorily was the system in the Allahabad University. In the Allahabad University the Syndicate appointed three persons of approved experience and ability.

Hon'ble the President : Has that anything to do with the Bill before us?

Dr. Zia-ud-din Ahmad : Yes, Sir, I am dealing with the provisions relating to the appointment of examiners. That system was very good. They appointed a Board of Examiners independently of the Board of Studies, and they did very well. Therefore, I would request the Select Committee to consider this provision, as I think the provisions now made in the Bill are exceedingly defective. Now the arrangement about external examiners is also vague. If we had adopted this principle, I am perfectly certain that the Director of Public Instruction would have

come down upon us and would have asked us to modify it. The Bill says that the teachers in the affiliated colleges should be taken to be the internal examiners but the university lecturers and professors should be considered as external examiners. This is practically the provision in the Bill. To call the university professors and university lecturers as external examiners is really a misnomer. In that case if we follow this Bill, then it means that no person who is not a member of the Board of Studies may be appointed external examiners. In every university we have got this rule that there must be one external examiner in each group of examinations. In the Aligarh University we have got a working rule, viz., that in the M. A. examination the internal examiners should not be in a majority, the majority must always be from the external side. This means that the number of examiners who are teaching in the university should always be in a minority and should never be in a majority. Contrary to our practice, I find that the Bill has provided that not even a single person should be appointed an examiner from outside because the teachers of the university and university professors will be treated as external examiners. I think this is a machinery which requires a little consideration. This will be evident if one were to look into the provision of the Bill. It may not have been the intention of the framers of the Bill, but that is what one gathers from a perusal of the Bill.

The other thing which requires serious consideration is the method of affiliation. The system provided in the Bill is that the Board of Examiners recommends a certain college to be affiliated to the university. It comes to the Executive Council and the matter is finished. This has never been the practice, if my honourable friend will remember, in the Allahabad University. It has not been the practice anywhere. It must go to the senate; that is the bigger body; and it must receive the consent of the Government, viz. the Minister. These things are exceedingly important. In the case of affiliation, the question should not end with the Executive Council. It must go to the Senate, and it must be referred to the Government, which should be the final authority. We have to deal with colleges all over the province and if it be left to the Executive Council to grant or refuse affiliation, I am afraid that things may be as bad as they were once in the Calcutta University. The Senate of the Calcutta University found that in most of the high schools there was regular provision in the budget for travelling allowance to members of the committee who went to interview members of the Syndicate. If a thing of this kind is not done, it will be found that provision will be made in the budget of the affiliated colleges for some members to interview members of the Executive Council. But if the matter comes to a big body like the Senate, probably these things will not be, and it will be a great check, so that only those colleges who are capable of teaching up to the standard required by the university will be affiliated, and the other colleges will not be affiliated. I hope the committee just appointed will look into this question, which is an important question, about the method of affiliation of these colleges.

The question of the appointment of the Deans that has not been mentioned. After all a Bill should contain somewhere mention how Deans are to be appointed. The other important thing is also that there are certain things which ought to have been in the Act and were entirely neglected, for example the Act lays down the constitution of the Visiting

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Board, the Act lays down the constitution of the Academic Council, the Act lays down the constitution of the Senate, but my honourable friend on the other side will admit that the most important body is the Executive Council, and not the Senate or Board of Examination, but the Act lays down no constitution for the Executive Council which is the most important body in the university. To leave this to the Statutes, which themselves can be changed by the Executive Council, is to leave the constitution of the body to itself. This should also be looked into.

Before I come to the crucial and most important point, I may be permitted to touch on one or two minor points, and one minor point is about the provision in the Act regarding the transitional arrangements, that is, the method in which the university can be brought into existence. I wonder if the Hon'ble Minister has visualized in his mind how it is to be created, and whether the manner which he suggests is efficient and workable and will create the university. The only way to create it is to appoint an executive head, or Vice Chancellor, for a limited period of at least one year to bring the university into existence, and afterwards, when all other officers have been elected, the university may be started after a certain period. The period of two months which is provided here is not sufficient. So I think I would request them to keep this in mind in the select committee, whether this is a workable scheme. I wonder, Sir, whether they have in their mind how are these faculties to work. These faculties are very unwieldy bodies comprising different kinds of subjects, and I at least fail to understand how these faculties would work. I would like to be enlightened by the Honourable the Director of Public Instruction about manner of working of the faculties.

There are two points about the proposal itself, that is, the personnel of the committee and the time for report. I may be permitted to add the name of Dr. Shafa'at Ahmad Khan to the committee.

Hon'ble the President : That can be moved later as an amendment.

Dr. Zia-ud-din Ahmad : I would also like to ask for an extension of the time.

Hon'ble the President : That also can be moved later as an amendment.

Dr. Zia-ud-din Ahmad : I come now to the most important question, which I consider to be more important than anything else, the question of intermediate education. Whatever the opinion of Government on this point, may be I do request them not to be persistent in their folly and mistakes. The general opinion in every university in India is now that the Intermediate Education Board is not working very satisfactorily. I mean the type of men now sent to the universities is not so good as the type of students that came to the universities a few years ago. The Government puts the blame upon the universities, that their teaching is not up to the mark. The universities on the other hand, say and say rightly, that the kind of students now coming to them in the junior B. A. classes are not the right type of men whom they can educate to the standard of the old Allahabad university. If anyone is doubtful about this point, he may communicate with any university and I am perfectly confident that there will be but one reply—that our intermediate education is not so efficient as it used to be in the

old days. Indeed the Hon'ble Minister has appointed a committee of which I also am a member. We have sat down and suggested some useful things, but our suggestions are within narrow limits. It is not within the province of this committee to consider the Intermediate Act itself. There are some radical defects in the Act which require modification, but the committee just appointed has got absolutely no power to consider the Intermediate Education Act. Unfortunately, as I said in the beginning, this Act was laid before the Council at a time when all the educationists and heads of schools and teachers of various colleges were engaged and had their whole attention concentrated on defending their institutions against the efforts of non-cooperation. It was then a secondary consideration to them whether the Act was placed before the Council or passed; they were tied to the defending of their institutions; Government at that time took rather an undue advantage of the situation prevalent and thought that there was no opposition because those who would oppose it were engaged in other work. I am sorry—I am not used to harsh language—but whatever harsh language there is should be applied to this measure. In the interests of our education this question should be seriously considered. We do not blame the Government. I am perfectly convinced that they have the interests of good education at heart as much as anyone else has. They want really to see that education in this province prospers and is of the right type; but I do request them to hear with an open mind, and just see that when every educationist says this thing, everyone is not mad. If a few persons say one thing and others say another thing the Government can exercise their judgment; but when it is the opinion of everybody, then I think it is high time that Government ought to consider whether the Act can be remedied or improved. In the Agra University Bill, which is now before us, they have not given to the Intermediate Colleges the power to be affiliated to the. . . .

Rai Bahadur Lala Mathura Prasad Mehrotra: On a point of order I want to know the time-limit for members in Naini Tal.

Hon'ble the President: He is an eminent educationist among us and he should be allowed to give us the benefit of his experience.

Dr. Zia-ud-din Ahmad: I assure the honourable member that I will allow him to speak for full two days on the Tenancy Bill and I will not trouble him.

The Agra University Bill, which is now before us, has clearly said that Intermediate classes will not form part of the Agra University. It will have only two classes in the B. A., and two classes in the M. A.: it practically comes to this. This is a thing which requires very serious consideration. In the olden days the students who came to these colleges after passing the Matriculation examination stopped there for full four years before taking the B. A. degree and thus they had the advantage of getting certain benefits from the traditions of those institutions whatever they may be. Now, students come only for two years, and everybody recognizes that a period of two years is hopelessly insufficient for giving any kind of culture or for imparting any kind of traditions to the students. My honourable friends on the opposite side will say that this has been based on the recommendations of the Calcutta University Commission, and I was one of the signatories to the

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report of the Commission. That no doubt is true; but they have carried out only half the recommendations of the Commission. The Commission clearly contemplate two important things, and one is that the degree course should be extended from two to three years. But no attempt was ever made to extend the degree course from two to three years. If the degree course is raised to three years then you must be prepared to increase the grant by at least 50 per cent. because the addition of one year will mean additions to the staff, etc. Otherwise there will be a breakdown for financial reasons. The other thing which the Commission said was that these intermediate colleges should not be cheap institutions; that every intermediate college should have a European professor—by “European” I mean an Englishman or an Indian trained in Europe, that in big colleges there should be three Europe-trained men or persons in the Indian Educational Service and that in the smaller colleges there should be at least one such. But we find that in the majority of the intermediate colleges there is not one single man of the rank of the Indian Educational Service. The principal in many cases is a person in the Provincial Service and is a very poorly paid person, a man who had not received European training. Therefore, unless we are prepared to increase the staff, unless we are prepared to spend large sums of money on these colleges, and unless we are prepared to endow the University to enable them to raise the degree courses from two to three years, the present system is not likely to give the same results as the old system did.

Now, I proceed to consider the question of whether intermediate education should form part of the Agra University. The present system of intermediate education as embodied in the Intermediate Education Act is, I submit, defective. Honourable members are very well aware that most of our students study in high schools. They have now, on passing the high school examination, to spend two years in an intermediate college; and again, on getting through the intermediate examination, they have to spend a further two years in a degree college. They have, therefore, to undergo three changes during the course of instruction, which is very unpleasant and also educationally unsound. There are two remedies for this evil. The first is to turn all the high schools into intermediate colleges in order to ensure continuous education to boys up to the age of say 17 or 18, and then they can prosecute their studies for the degree for three years in the university. This was, in fact, the ideal placed before us by the Calcutta University Commission, but I frankly admit that it is very expensive, and no province is at present prepared to pay the price for it. Being unable, therefore, to follow this ideal, what is the second best thing? It is this, that we should revert to the old system of having the high school classes quite separate from the university, which should of course comprise the intermediate classes, and it is indeed this aspect of university education that I wish very strongly to impress on the Government. I will beseech them not to be too obstinate on the point, and I am confident that they will allow the members of the select committee, and later on the Council; when the Bill comes before us to be passed into law, an opportunity to consider this important question.

Khan Bahadur Hafiz Hidayat Husain: Speaking as a layman, I will not take much time of the Council, and I will confine myself to a brief

discussion of the principles and the general clauses of the Bill. I am somewhat surprised at the opposition of my distinguished townsman Mr. Gavin Jones, when he opposes the Bill on the ground that he does not want to make education cheap in this province and that on this ground alone we should not have any more universities. I entirely agree with him when he says that education of a higher level should be given than has been the case hitherto, but to turn down the Bill on imaginary grounds would be inexplicable. But I think that it is perhaps a chronic habit of Mr. Jones to oppose the formation of universities. He opposed the formation of a university at Cawnpore, though the idea was to establish a technical university in that town. The crucial point is this: Is a university required at Agra or not? So far, the external side of the university of Allahabad has been managing the colleges existing in these provinces outside the "Limits of the university" and elsewhere, for example, in Central India and Rajputana. The Allahabad University has been managing these institutions and has been an examining body for these colleges. The Allahabad University is anxious to divest itself of the management of these colleges and to have nothing to do with their examinations. What are we going to do with these colleges? Should these colleges be converted into intermediate colleges or should they be scrapped altogether? I do not think there can be one voice raised in favour of the former proposition. The latter proposition is unthinkable. I shall come to the question of intermediate colleges later and I will show that the system of intermediate education has not been satisfactory in this province. Just now I confine myself to one point, viz., that there cannot be one single voice that would advocate the conversion of these colleges into intermediate colleges. The Christ Church College at Cawnpore which brought itself down to the status of an intermediate college from a Degree College has now gone back to the old status and has been recognized by the University of Allahabad for education up to the B. A. standard. Probably the same is the spirit of many other intermediate colleges. Is it therefore possible or proper to leave these colleges in the lurch and make no provision for them?

In the last report of the Education department for 1924-25 it is stated that the external side of the Allahabad University has profited by the internal side; that is to say, that the efficiency, expansion and improvement shown by the internal teaching university have been shared by the colleges affiliated to the Allahabad University forming the external side of the university. If this was so, the question might arise—what, after all, is the need of having a fifth university in this province. The Education Secretary during the last budget debate on the 17th March, 1926, stated that because the external and the internal sides of the Allahabad University had got on so badly with one another that it was desirable to separate them. The policy of the Government therefore was that there should be an affiliating University at Agra in the interests of higher education. The question is—why they have not got on well. Not knowing the inner working of the Allahabad University, I will not attempt an answer to this question. But this much I could say that there has been resolution after resolution both in the Academic Council and in the Council of the Associated Colleges have these external colleges separated from the Allahabad University proper. Therefore, I say that, because these colleges are

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so to say disowned by the Allahabad University, they must have a separate university to look after them. In 1920 the Agra people approached His Excellency the Governor for the creation of a teaching and residential university at Agra. They changed their mind because the question of finance came in and they thought that they would have an affiliating university rather than a residential university. I think that there should be a university at Agra which should be not of a federal type but of an affiliating type, because the wants of a federal type of university cannot be met at Agra. It is perfectly true that the policy of the Government during the last decade has been to establish residential universities, and I have no doubt whatsoever that residential universities contribute far more largely to the advancement of higher education than affiliating universities do; but the fact remains that, although it was thought at the time of the reorganization of the Allahabad University that there may be centres which might develop from colleges into unitary residential universities, the question of cost unfortunately came in which made the consummation of the wish absolutely impossible, keeping up the *status quo ante* of the Colleges. Therefore, so long as those conditions continue, we shall have perforce to be content with the affiliating sort of university. So far with regard to the need of a university at Agra.

Coming to the provisions of the Bill, I will not go into minute details as my friend Dr. Zia-ud-din Ahmad has done. I will confine myself to one or two observations. I do think that this Agra University Bill, so far as it goes, is an improvement. I find that there are in this Bill traces of a far more autonomous character than are to be discovered in either the Allahabad University or the Lucknow University Act, and I hope my friend Dr. Zia-ud-din Ahmad will forgive me when I say that, in my opinion, the appointment of honorary vice-chancellors will be more beneficial to a university like the one we are establishing at Agra than the appointment of paid vice-chancellors.

A point of some importance which I wish particularly to lay stress on is the one contained in section 24, clause (2), of the Bill. As originally drafted by the Committee, the control of intermediate classes was to vest in the university. This drew forth a large volume of criticism, the most noticeable of which was from Canon Davies, of Agra, whose services to the cause of education in these provinces cannot be disputed. Canon Davies took his stand on the report of the Sadler Committee, and urged that when every college had to make a choice and had to confine itself either to the intermediate course or to the degree course, it would not be beneficial to leave intermediate education for the management of the Agra University. That clause in the Bill has undergone certain changes: it reads as follows: "Notwithstanding anything contained in any other law for the time being in force, colleges affiliated to the university, including colleges that may be established and affiliated to the university after this Act has come into force, shall, until such time as the Local Government shall direct, be permitted to maintain or comprise classes in preparation for the Intermediate or the Commercial Diploma Examination of the Board of High School and Intermediate Education, United Provinces." It comes to this that in the same college you will have a sub-college, managed by the Board of Intermediate and High School Studies and

the college itself affiliated to the Agra University. This dual control in the same institution is, I think, unsound. Therefore, either we should scrap these intermediate classes from the degree colleges altogether, or we should have another system, under which the examining agency for both will be the same. I have been serving on the Intermediate and High School Examination Board of these provinces for the last year and a half, and my experience is that however much enthusiastic we might wax over this Intermediate system, the output of the Intermediate colleges is much poorer than it used to be in the old degree colleges. What is the reason of this poverty? The reason is that we have been far too lax with regard to the standard, the instruction and the examination of these institutions, and more particularly with regard to the supervision of these colleges. As my friend Dr. Zia-ud-din Ahmad has pointed out, in no intermediate college in these provinces will you find a man who has got ideas in his head. It is one thing to say that, because a man has served all his life in the department, therefore he is expected to know something of education when he gets to the principalship of an intermediate college; but it is another thing to say that a man has ideas in his head and is competent to improve on the system of intermediate education. Therefore, I think, the intermediate education system has not been established on a satisfactory footing, and has failed to produce the results expected of it. A few months ago, Dr. Zia-ud-din Ahmad brought forward a resolution in this Council urging certain changes in the system of Intermediate education. It was strenuously contended by the Deputy Director of Public Instruction, who was then officiating for Mr. Mackenzie, that the system had not had a fair trial and therefore it would be premature to introduce any changes in it. My answer to that contention is—how many years and how many lakhs and lakhs of rupees we are going to spend before your experiment will be completed? Is it not a fact that, although your standard of intermediate education has fallen, your costs have been going up year by year? Is it also not a fact that, merely for the sake of multiplication of colleges, an unhealthy rivalry has been fostered, which the State has to feel? Whatever the standard of education, whatever the standard of teaching and the status of the teachers, colleges must be created. I think this has a baneful influence on the education of our boys, and the sooner it is abolished the better for the advancement of real education in these provinces. How much longer are we going to travel on the old grooves, how much longer are we going to tread the same old trodden grounds? Has not the Government, has not the Education department something new to place before us? Is the education policy of the Government confined only to granting so much money to this institution and that institution? Is there nothing better to do? Cannot better ideas be brought into practical shape? If the answer be "no" then the sooner we bid good bye to these intermediate institutions the better for us all. The Hon'ble Minister has stated in his opening speech that the Government were at least for some time to come inextricably committed to the policy of the Intermediate Education Act. I am sorry to hear this. It comes simply to this, that although the Education department may well know that the policy of the intermediate education has failed, yet lakhs and lakhs must be spent to vindicate that policy before the Government will own its defeat. I know that the Government is sometimes stubborn, is obstinate, but let that stubbornness, that obstinacy, be confined to

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reasonable limits. Let it not go further than is absolutely necessary. I, therefore, agree entirely with Dr. Zia-ud-din Ahmad when he says that we should turn over a new leaf and let this Agra University be established on the type of the old university, i. e., it should be a university which should be the examining body for the degrees, the intermediate and the entrance examinations and also lay out curriculum of studies for all these examinations. There is one other point with regard to this Bill which I wish to emphasize and that is the exclusion of the co-operation of the managing bodies with the external authority in the choice of tutorial staff. Section 11 of the schedule lays down that the Government will have to be satisfied that the pay of teachers is sufficient to attract and retain competent men, and that reasonable security of tenure is granted to every teacher, unless he is filling a temporary vacancy or is on probation. Now, I hope that by and by the time will come when the spirit of subordinating self-interest to the larger interest of the country will also prevail in these provinces which will produce men like Dr. Paranjpe of Poona—men who might be willing to serve their province for a paltry sum. Therefore, it is not right that external authorities alone should be given the power to regulate the pay of the teachers without the collaboration of the managing bodies of the colleges.

Hon'ble Rai Rajeshwar Bali : The Executive Council, not the Government.

Khan Bahadur Hafiz Hidayat Husain : I stand corrected. The Executive Council. I should think that some weight should be given in this matter to the opinion of the managing bodies of the Colleges, also I suggest that the managing bodies of the colleges and the Executive Councils of the University should together form a board to control the pay of the teachers and their retention in the service of those colleges.

Now, I come to the last point, and I hope the Council will not misunderstand me when I urge for the representation of minorities in the constituent bodies of this university. The Sadler Commission, which is our inspiration for all education reforms, said : "In order to safeguard the interests of Muslims there should be representatives from the Muslim community upon the principal governing bodies, such as the boards and committees which will be constituted in the university. The particulars of this representation will be found in chapter XXXVII. We also recommended the establishment of a Muslim advisory board with power to advise any constituted body of the University upon any question affecting the interest of Muslim students." They further said :— "Having regard to the comparatively backward condition of the Muslim community in regard to education, every reasonable means should be taken to encourage Muslim students and safeguard their interests. We have held this always in view, and our numerous and important recommendations to this end are summarized in a special chapter." Now, Sir, this point was brought to the notice of the distinguished late Minister of Education, when the Allahabad University Bill was being referred to a select committee and in winding up his speech he said :— "The question of Muslim representation, separate Muslim representation, in the university bodies has been raised by two honourable members. It was thought that it was not necessary in the conditions of these provinces to make such provision as was thought

to be necessary in the case of the Dacca University. The question was again considered in the committee on the Intermediate Education Bill with the same result. . . I do not think, unless an overwhelming case can be made out for the necessity of separate communal representation in the Allahabad University, anybody should welcome the prospect of the extension of this system to educational bodies."

I am the last person to introduce separate communal representation in educated bodies like universities, but the Hon'ble Mr. Chintamani himself said that if an overwhelming case could be made out, separate representation will have consideration.

Since the Allahabad University Act was passed, there have been two elections to the Council of the University from the registered graduates and also two elections to the Council of Associated Colleges. On the first occasion, when thirty members had to be elected to the Council, although fifteen Muslims came forward for election, only two out of thirty were returned. The same thing was repeated in the subsequent election last year. Now, in the Council of Associated Colleges, to which five members had to be sent by election, not one Muslim was returned on either occasion. The state of committees under the Intermediate Education Act is still more deplorable. If these are the conditions prevailing, is it not right that separate representation, however feeble it might be, was introduced in the Act itself? We are going to educate our countrymen for a definite object and that object is that they would take their legitimate share in all the self-governing institutions of the country. I ask—is it right that at this stage of country's advancement one important minority should be ignored from such institutions and be allowed to grow up in an undeveloped state? This, Sir, is my reason for putting forward this claim which I place on a higher plane of nationalism than the cramped view-point of communalism. With these words I support the motion of the Hon'ble Minister.

The Council here adjourned for lunch.

After the recess the Deputy President took the chair,

Dr. Ganesh Prasad: It is a source of real pleasure to me to say a few words in praise of the Government benches in connection with this particular bill that they have introduced. Unfortunately in the past I have had to say sometimes rather harsh things in connection with the Agra University Bill. Although I am not prepared to withdraw all that I said, yet I am quite willing to make amends and to endorse what my esteemed friend Dr. Zia-ud-din Ahmad said in thanks to the Hon'ble Minister, Kunwar Jagdish Prasad, and my very esteemed friend the Director of Public Instruction. After having said this, Sir, I should like to say first a few words in connection with the criticisms that fell from the lips of Mr. Gavin Jones. After that I would take up the consideration of the various provisions of the Bill and have my say on as many clauses as possible. Mr. Jones is against the idea of having an additional university in the United Provinces. I may inform this honourable House that his position is not an original one. As a matter of fact as late as 1912, Sir Asutosh Mukerji almost convinced the Government of India that the right policy for the Government would be to have one central university of the highest type which would be financed by the Government and which would probably

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be a source of pride to the whole of Asia. Unfortunately for him, and unfortunately possibly for Bengal, his view was not taken up by those who were the advisers of Lord Hardinge. One of the advisers was no less a man than His Excellency Sir Harcourt Butler, who was then the Education Member. I am quite prepared to state, though I have not got documentary evidence to prove my statement, that it was on account of the influence of Sir Harcourt Butler that the Government of India and the Governments of various provinces came to the conclusion that there should be as many new universities as possible. I am quite prepared to say that these universities were expected to be of a unitary, teaching and residential type. Now if you go outside India you will find that the idea that there should be one central and most efficient university in a country is not unique. In Italy, as honourable members know, for centuries there were only two universities, namely, the Universities of Salerno and Bologna but now they have got 21 universities in Italy. Similarly, in the Holy German Empire, excluding Italy, there were for centuries only two or three universities, the most important of these being the University of Prague, but they have now got as many as 23 universities in Germany. I know that in England only about 100 years ago there were not more than three Universities, namely, the University of London, the University of Cambridge and the University of Oxford. Now they have got about 10 universities in England. Human nature is throughout the world the same, and universities will crop up in spite of men like Mr. Gavin Jones. I am quite prepared to accept his credentials and am prepared to take for granted that he is as much for the diffusion of education among my unfortunate countrymen as he is probably for the diffusion of education among the people of Wales for example. But human nature is not a thing which can be controlled. As regards the question of efficiency, my humble opinion, backed by a number of educationists, including the great mathematician Dr. W. H. Young, whose place I occupy at present in the Calcutta University, is that most of the provincial universities of Great Britain are inefficient and have low standard. Provincial universities outside Cambridge and Oxford cater for two type of men: men who are above the average and men who are below the average. Men who are above the average in ability generally join Cambridge or Oxford University as freshmen at the expiry of their academical careers at the universities just referred to. Men who are average or below the average have no higher ambition than to enter into business life or works as curates after the conclusion of their academical career at a provincial university. That is not my opinion. That is the opinion of no less distinguished a man than Dr. W. H. Young.

I would not say a word about the financial aspect touched on by Mr. Jones. The country of Scotland is an extremely poor country, although Scotchmen are rich, and still there are four universities in Scotland and have been there for centuries. How a Scotch student lives, how he manages to keep body and soul together, is known to everyone who is a student of literature. I can mention name after name of distinguished Scotchmen who were sons of shepherds and were able to live during their student days on oatmeal porridge. The question of finance and poverty should not loom large. Every human being has a right to receive as high an education as is possible for him and it is not reasonable

for any member of this House to put forward objections like those of Mr. Jones. In these provinces the population is about 450 lakhs, which number is about the same as the number of persons in Great Britain and Ireland, is greater than the number of people in France, is slightly less than the number of people in Germany and is greater than the number of people in Italy, and therefore to say that to add another university to the four universities that we have already got would mean too many universities is an insult to our intelligence. It would be news to Mr. Jones to know that out of every 100 men in Bengal only one man is literate in English and out of every 150 men in the United Provinces only one man is literate in English, and therefore to say that we are producing too many educated people is, again I say, an insult to our intelligence. I hope I have dealt with Mr. Jones' main objection that we should simply fight shy of having an Agra University, because that will raise the number of universities from four to five. Mr. Jones has not gone into the merits of the Agra University Bill. He has simply fought shy of the idea of having a fifth university. I would be extremely happy if we could have for the United Provinces with a population of 45 millions as many universities as Germany, France or Italy has. I am quite sure that the time will come when we will have as many as 25 universities in the United Provinces instead of five.

Coming to the provisions of the Bill, I would take them as far as possible one by one. First of all, as regards the question of having an honorary Vice-Chancellor elected by the Senate subject to confirmation by the Chancellor. This is a question of very great difficulty and I think that after the experience of the Calcutta University one should fight shy of having for an affiliating university a Vice-Chancellor appointed by the Chancellor, much less a Vice-Chancellor who will be paid out of the funds of the university. In the Calcutta University it has been found very difficult to find a man who would command the confidence of the Senate and it is no use putting a man in the chair of authority on whom a vote of censure will probably be passed at every meeting of the Senate. The Government of Bengal has found it extremely difficult, specially within the last fifteen years, to get a man who would carry on the high duties of Vice-Chancellor. I therefore think that from a logical and merely theoretical standpoint it may be desirable to have a paid Vice-Chancellor and to have a Vice-Chancellor who would not depend for his post on the vote of the Senate, but it would be much better to have a Vice-Chancellor who would command the confidence of the body over which he would preside. Therefore I am opposed in that respect to my esteemed friend Dr. Zia-ud-din Ahmad, as I was in the Agra University Committee.

Now, I shall take up some minor points before speaking about the control of Intermediate classes. Dr. Zia-ud-din is an extremely busy man like myself. I was only day before yesterday at Jaunpur, yesterday at Benares, today I am here, and I will be in a few days as far as Calcutta.

Therefore we who are not professional politicians have to do many things and we should be excused for inadvertence. When Dr. Zia-ud-din Ahmad spoke about the delegation of powers of the Vice-Chancellor he did not see that the powers of delegation are only in relation to the convening of meetings. The Vice-Chancellor has absolutely no right to delegate any other power, for example that of control over the students.

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The clause here only relates to the convening of meetings and it would be admitted that it is extremely desirable that an honorary Vice-Chancellor who, as Dr. Zia-ud-din Ahmad rightly thought, may not always be at Agra, should be in a position to tell some person that, till such and such time, after consultation with the men concerned that person should convene a meeting of the Senate or of the Executive Council.

As regards the limits of the university, it is perfectly true that under section 20 of the Allahabad University Act there is a limit of ten miles prescribed and possibly there is a similar limit for the Lucknow University, but if my memory does not fail me, there is no such restriction in the case of the Benares and Aligarh universities, and it would be extremely desirable that we should fix some kind of limit like that for Benares and Aligarh.

Now in this connexion I will make the suggestion which I made in the Agra University committee, a suggestion which was practically dropped by the committee by the casting vote of my esteemed friend, Mr. Mackenzie. The Queen's College has been most unfortunate in this respect that whereas its contemporaries like the Muhammadan Anglo-Oriental College, the Canning College and the Muir Central College, have blossomed into universities, that poor body, which is probably among the oldest in the United Provinces, has been degraded into the position of an intermediate college. It would not be at all unwise for this Honourable House to put Queen's College in the position which it commanded for about 50 years, namely, the position of a first grade college. My sympathies are specially with the Queen's College, because when I was in the position of a government servant I spent about ten years in the Queen's College and, I think, I worked more there than I am working at present, having had to lecture about four to six hours every day, and that work I did with the greatest pleasure. Therefore my sympathies are with the people of Benares, who find their college, I mean the Queen's College, degraded to the position of a very inferior college.

As regards the question of affiliation, Dr. Zia-ud-din Ahmad said that affiliation should follow a report to the Executive Council considered by the Senate and sanctioned by the Government or the Chancellor. Here, I believe, there is a good deal that can be said in favour of that particular view of Dr. Zia-ud-din Ahmad, but we have got to consider the times. It is certainly true that in the old Allahabad University there was a provision like this, just as there is in the present Calcutta University and in every other university controlled by the Act of 1904, but the Government are the best judge in this matter and if they are perfectly willing to give to the university full control over the question of affiliation without any reference to the Chancellor or to the Government, I think that it would not be a popular step for this Council to say that we should set back the hands of the clock and ask the Governor or the Minister to have any control over this question of affiliation. In fact indirect control there will be, and there is even now. The voice of Mr. Mackenzie as a member of the Executive Council is, if I may say so without any disrespect to him, potent in the Allahabad University as was the voice of the Director of Public Instruction in the old Syndicate, when he was an *ex officio* member of the

syndicate; but there have been occasions, when I must say his view has not received that particular support which probably he expected it to receive and he has been defeated. That means that the public has probably come into its own. Therefore, in this particular matter, I am not prepared to agree with Dr. Zia-ud-din Ahmad.

I now come to the question of the constitution of the Executive Council. The provision in the Bill is on the same lines as in the Allahabad University Act of 1921, but unfortunately the Board of Inspection has been given a higher status, because its constitution has been put in the Bill, which constitution cannot be amended without reference to the Legislative Council. In the case of the Executive Council it has been considered quite desirable that its constitution should be changed by the Senate itself subject to confirmation by the Chancellor. I think that the Board of Inspection ought not to be given such a high statutory authority. But this, if I may say so, is a fairly minor matter and I have started today with a definite intention of picking as few quarrels with the Government benches as possible. I might have quarrels with them in the Select Committee, or I might have quarrels with them on the last day when this matter will be before the House for the passing of the Bill as an Act.

I come now to a difficult question, viz., that about the appointment of the first Vice-Chancellor. This matter was very carefully considered in the Agra University Committee and it was decided by a majority that the first Vice-Chancellor should not be anyone but one elected by the Senate in the way in which provision has been made in the Bill, and to bring the various bodies of the university into existence, a special officer should be appointed. I think that after the matter had been very carefully considered in the Agra University Committee we should not go back on the findings of that committee. This too is a fairly minor matter. I think that it would not be difficult for this particular provision of a special officer to be worked at least as efficiently as the provision of a first Vice-Chancellor. I am not going to take up the ashes of the old quarrels and unpleasant memories, particularly in connexion with the appointment of the first Vice-Chancellor of the Allahabad University, which led to all sorts of troubles. It was said by some influential people that the first Vice-Chancellor had behaved autocratically in certain matters, it was said that he had not taken note as carefully of the feelings of certain members of the university as he ought to have done. I do not share those views. I make it perfectly clear that I have the highest regard for Sir Claude de la Fosse and I think that he managed the work of the Vice-Chancellor with the greatest efficiency, but we know well that his appointment as first Vice-Chancellor practically meant his retirement prematurely from the United Provinces. Therefore in this matter also I am against my friend, Dr. Zia-ud-din Ahmad.

After disposing of some minor points, I come now to the most important question, which I would not have liked to take up but for the importance that has been given to it in today's debate, and that is the question of the Intermediate classes in the affiliated colleges. I hope, Sir, I am quite in order in making reference to what happened in the Agra University Committee. In that Committee this question was carefully considered and it was decided at one stage by a majority that

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the Intermediate classes should remain under the control of the University of Agra and should have their students examined by the Agra University. When this matter was taken up at the final meeting of the Agra University Committee on November 24, 1924, I as a member out of deference to the wishes of the Director of Public Instruction yielded and was willing to have another provision substituted in this connexion, and I think that it is most unfortunate that we have gone back even on that compromise that we arrived at in November, 1924. If you will look into the provision as they are in the Government Bill before the House today and section 7 of the Allahabad University Act of 1921, you will find that there is practically no real difference. The present arrangement is "that it shall not be lawful for the University or for any associated colleges to maintain classes for the purpose of preparing students for admission to the university beyond a period of five years from the commencement of this Act, save with the previous sanction of the local Government." Here in the Bill you are told that Intermediate classes shall be permitted to remain in the affiliated colleges as long as the local Government considers it necessary. I maintain that there is absolutely no difference between the two forms. There may be a difference in words, but really there is no difference. The question is whether it is desirable in the interests of efficiency, and, if I may so, of independence of character, to allow the sword of Damocles to hang over the heads of proprietors or managers or authorities of the affiliated colleges? Any day the Government benches and I say so without disrespect to my friends Kunwar Jagdish Prasad and Mr. Mackenzie, any day these two worthy men may most sincerely and honestly take it into their heads that a particular affiliated college must be deprived of its Intermediate classes. The result would be that that affiliated college might be made to do anything because Intermediate classes practically serve as feeders to the various higher classes, and serve as a kind of financial fountain. For the Government to say that it would make good the loss is not a desirable action. Today Government might bring before the Legislative Council in the new schedules certain proposals for a particular college. Two years later a new Council may turn down that provision and the affiliated college would be no more. This state of affairs and this attitude of Government is not good. At present a similar situation is agitating the minds of people in Bengal. I am sorry to allude to Bengal, because my friend, Mr. Jones, seems to think that if there is any place in India where there is no real education, where there are shoals of superfluously and superficially educated people, it is Bengal. I have, however, to refer to Bengal because Calcutta University is the mother of universities in Northern India, and if you look into the courses and constitution of any university in Northern India you will find that they are in most cases more or less modelled after the mother Calcutta University. For that university, for which, as my friends know, a special Commission was brought into existence, the Commission made a number of recommendations, one of them being that there should be set up a board of secondary and intermediate education for Bengal as early as possible. Now, if I remember aright, the report of the Commission was published either in 1918 or 1919. After the report had been published, two very distinguished countrymen of ours who were the only

Indians on the Commission, thought it proper to change their views in this matter. One was Sir Ashutosh Mukerjee who said that, after having seen—here again I ask pardon of the chairman of the board of intermediate education—the working of the Intermediate Act in the United Provinces, he was no longer in favour of setting up a board of intermediate and secondary education for Bengal. And my friend, Dr. Zia-ud-din Ahmad, has not once, not twice, but any number of times made it clear that he no longer thinks that it is desirable to consider the recommendation of the Calcutta University Commission as something which should be given effect to in every place without considering the circumstances and the situation of that place. At present, therefore, Sir, in the province of Bengal the Government of Bengal are extremely anxious, for reasons best known to themselves (I have not sufficient time to go into details) to thrust down the throat of the Calcutta University a Bill which is intended to produce board of intermediate and secondary education like the one in the United Provinces. The Calcutta University is not prepared to swallow this medicine, and I as a fellow of that university am trying to reject it before it reaches my stomach. And, I think, that I might give a lot of trouble to Government in that respect. Trouble is being given now. A committee has been set up by the Senate of the Calcutta University to consider the desirability of accepting the Government proposals. The “Leader” or “Misleader” feels much upset by this attitude of the Senate. The situation is that a particular state of affairs was brought into existence in 1921 in the United Provinces. By whom it was brought into existence I have made it clear—by Sir Harcourt Butler and no other man. Anyone else who takes any pride in having brought it into existence, that is, the so-called reforms of education, is much mistaken and is not wise. Therefore, Sir, a certain situation having been produced in 1921, the “Leader” or “Misleader” thinks that other provinces must bow down and do worship to that particular step for reasons best known to it. The enthusiasm of the “Leader” or “Misleader” for the so-called reforms has something to do with the ambitions of an ex-Minister, somebody wanted to be an executive councillor or governor. After all my friend, Mr. Mackenzie, is only an officer of the Government, and I mean no disrespect to him when I say, as I have said repeatedly, that the Intermediate Education Act is a failure because of its inherent defects and not because of him. I see that he demurs. However, we can agree to differ in this particular matter. I will try my best with the help of my friends Dr. Zia-ud-din and Dr. Shafa’at Ahmad Khan make suitable changes in this respect in the Select Committee and the Council, and even failing to secure these changes I will not oppose the Bill. I would accept the Agra University Bill even in its present form. Two important principles have been accepted there: we are going to have an affiliating university and a university which will be fairly cheap. A great deal has been said in this Council on several occasions about the distinction between an affiliating university and a teaching university and a teaching and residential university. The University of London is an affiliating and examining university, and as a poor and humble Indian I am quite prepared to think that what is good enough for the great Metropolis of Great Britain and even of the world is good enough for us poor people of the United Provinces. If anybody thinks that the London University, which sends its question papers to distances of ten thousand miles from

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London, which papers are answered by students who have never been beyond their particular village or town, to say nothing of having seen the shores of Great Britain, and which having been answered bring to some of those students titles of B. A., and M. A., is a bad institution, I am quite willing to say I am prepared also to create and bring into existence a bad institution like that. We politicians must be as truthful as possible. We must realize that after all what is untrue is bound to be found out. Today I may shout at the top of my voice and say we ought to have in the province a teaching and residential university. Tomorrow I may talk of the need of a teaching university after the pattern of the universities of Germany, or ask for Government universities like those of Italy and France. Or I may ask for universities such as are to be found in Scotland or England, teaching universities with low standards. The next step may be to say that we ought to have an affiliating university. But the wisdom or unwisdom of my advice is sure to be found out. Although there was a time when it was considered orthodox to ask for a teaching and residential university, the idea is gaining ground that a teaching and residential university can be run more or less on the lines of a shop. It is imagined that you can have a teaching university, or a teaching and residential university, by just putting that label on an old institution and running it as it used to be run before. Is there any real teaching and residential university at present in these provinces? None with the possible exception of the Aligarh Muslim University. At Allahabad, Lucknow and Benares a considerable number of university students live outside the university provinces. On the floor of this House people had recently come forward and suggested that the expansion of the Allahabad University should be cut down. That university is being run at present as a unitary teaching university, not as a strictly residential University, because every student is not compelled to remain on the premises of the university. It is being run at about half the cost which was considered necessary by the Advisory Committee which sat in 1920. I mean it is being run at a cost of about Rs. 7,87,000 per year, while the cost estimated by the committee was in the first few years to be annually Rs. 13½ lakhs, and I maintain that you cannot run a unitary teaching university in India at less than Rs. 20 lakhs a year. And even then you may not be able to run it properly, because you cannot get the right type of teachers. You may say:— "We have got a university, we have got splendid buildings, and we are spending Rs. 20 lakhs on the establishment." But will you be able to persuade men of the right type to work there as teachers? Where are these men? They cannot be manufactured to order in a day. The right type of people can come from Germany. But I do not know if my friend Mr. Mackenzie and other members of Government will very much bless the idea of bringing Germans to fill higher chairs in any university in these provinces. But will you be able to get the right type of men even from England? Certainly not. I know for the Calcutta University a gentleman was offered Rs. 5,000 a month to work as a Professor of Mathematics, but he refused. For-yth was paid Rs. 15,000 for two months to work as a Reader of Mathematics in the Calcutta University. You may spend lakhs and lakhs but you cannot

always get the right type of men. Therefore, simply to say that we shall have a teaching and residential university is to say something childish. Therefore, I think, Sir, that the right step has been taken to face the situation as it presents itself to us. As has been said by my friend, Dr. Zia-ud-din Ahmad, and by my friend, Hafiz Hidayat Husain the situation here is this. You have got at present an affiliating, university side by side with a teaching university. I mean the Allahabad University. All that you do is this, that you are cutting out the affiliating University from the teaching university; you are not creating a new institution. If tomorrow the Cawnpore people come forward and say that they ought to be given a teaching university, I would be the first man to say that it is a better proposition than an affiliating university; and I would request my friend, Mr. Gavin Jones, and other merchant princes to come out with lakhs and lakhs so that we may have a real teaching university and not an affiliating one.

I have done; but there are a few minor points on which I would have liked to speak. As I said before, I was not prepared to pick quarrels with anybody. There will be occasion in the select committee, where we will consider the question of representation, the question of constitution, etc. Today I am afraid I have already taken about 40 minutes and, therefore, I do not want to take any more of your time.

Rai Bahadur Lala Mathura Prasad Mehrotra: I rise to congratulate the Hon'ble Minister of Education on the way in which he had made out a case for the establishment of a university at Agra. I have heard with rapt attention the speeches delivered by other honourable members, but they have confirmed my idea that it is not proper to establish a University at Agra at present. Only two reasons have so far been advanced by all the speakers, and I will take them one by one. The first point that they have discussed is that it mars the efficiency of the Allahabad University on account of which it is not running smoothly. The second point is this that the external side of the Allahabad University should be separated, because it is the wish of some persons of vested interest and that wish has also been embodied in resolutions passed both by the Council of Associated Colleges and the Executive Council of the Allahabad University, to which I shall refer later in detail. For the present, I wish only to observe that the Allahabad University has been reconstituted exactly on the lines recommended by the Calcutta University Commission. If the combination of the affiliating and residential systems has been a success in Bengal, there is no reason why it should not be a success here. Further, until a few years back there was only one university in the whole of the province which conducted examinations from matriculation up to M.A. or M.Sc. It was not considered to be encumbered then; why should it be considered so now? So much for the alleged want of efficiency in the reconstituted Allahabad University.

I now advert to the resolutions passed by the associated colleges and the Executive Council of the Allahabad University, and in this connexion, with the permission of the House, I wish to read a few sentences from the speech of my learned friend, Dr. Ganesh Prasad, delivered on January 29, 1924.

He says:—"With regard to the recommendations of the Council of Associated Colleges, I should like, also as member for the Allahabad

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University, to mention that there are certain persons associated with the Allahabad University who are not in favour of a university at Agra. In the Council of Associated Colleges, when a motion was made in November, 1923, serious opposition was encountered, and it was only by a *narrow majority* that the motion was passed. When the matter came before the Executive Council on January 5, 1924, there was again *very strong opposition* not from my friend, Dr. Shafa'at Ahmad Khan, a member of the teaching staff of the university, but from many other teachers of that university. Now, I may tell you that I was one of those who from the very beginning of my association with the Allahabad University had been in favour, of a university at Agra. I, therefore, did what I could to *beat down opposition in the Executive Council*, and the Executive Council accepted the recommendation." It will appear from the above quotation that the resolutions were passed by a narrow majority, and that opposition to them was really virulent. The opinion of the majority should be considered no doubt, but it should be seen how that majority was brought about. A resolution can be passed by canvassing and in many other ways, but it should always be given full consideration in an important matter like this.

Now I come to the arguments that are against the establishment of the proposed University at Agra. The Hon'ble Minister has said that the university will cost some Rs. 10,000 in the first year. I beg to differ on this point. From the Bill it appears that there will be an Honorary Vice-Chancellor; but it was just said by my friend, Dr. Zia-uddin Ahmad that the Honorary Vice-Chancellor should get some remuneration. Even before the Bill is passed into law the question of remuneration for the Vice-Chancellor has been raised in the Council and I am quite sure that after some time the question will be brought before the councils of the universities that there should be a whole-time and paid Vice-Chancellor drawing a fat salary of Rs. 2,000 to Rs. 3,000. Then there is a provision for the appointment of a Registrar, and I believe, he will be a whole-time man. I fail to understand how Government will be able to get an efficient man for less than Rs. 15,000 a year. Further, there will be other expenses in connexion with the travelling allowances of the members of the Senate, the Executive Council, the Academic Council, the Inspection Board, the Faculties, and so on. I fail to understand indeed how a sum of Rs. 10,000 will cover all these expenses. I believe that the examination fees will cover only the expenses which are incurred in conducting examinations and paying the examiners. There is also a provision for the employment of teachers. I do not know whether these teachers will be paid by the associated colleges or by the university. If they will be university teachers, a large sum will be required for them. It cannot, therefore, be said that all this will cost so insignificant a sum as Rs. 10,000. I believe that the cost of this university will certainly be less than that of the University of Allahabad or Lucknow, but it cannot be so low a figure as Rs. 10,000. It has just been announced that free and compulsory education has received the assent of His Excellency the Governor and the Government of India. I think it is proper to pay more attention to primary education than to university education. We have already four universities and the number of scholars in them is very

small. It was only the other day that I found from the speech of my learned friend, Dr. Ganesh Prasad, that the cost of the students in the Allahabad and Lucknow universities comes to about Rs. 1,000 per head and the cost of the students in the Aligarh and Benares universities to about half that sum. It cannot, therefore, be said that we are spending less on university education. The cost of primary education comes to hardly Rs. 7½ per head, and I for one believe that more attention should be paid to primary education. The literacy in these provinces is about 4 per cent, and I think it is the first and foremost duty of the Government and all of us to pay greater attention to raise the number of literate persons in these provinces.

The second point is about the deterioration in standard. I believe that there is surely a deterioration, and just to prove this I will quote two sentences from the Report of the Muddiman Inquiry Committee, in which the Government have submitted a note at page 7. They say:—"The universities impelled by financial pressure have begun to compete for students, and the easier they make their courses and examinations the more likely are they to be successful. This reacts on the secondary education, and in primary education there has been little progress despite a great increase in expenditure." This is the opinion of the Government of our provinces about the deterioration in standard.

I now come to my last point about the intermediate education. I differ from the views of the two learned doctors when they say that the Board of High School and Intermediate Education should be abolished. It has not been given a fair trial. I think that they are against the system of education given by this Board in a vague manner without pointing out particular defects. The system recommended by this Bill for Intermediate Education is, I think, a dual system by which intermediate classes will not be separated from degree classes. What is laid down in the Intermediate Education Act and the Allahabad University Act is that colleges should choose either to keep themselves up to intermediate standard or to degree examination, but that they should not keep a combined system. On the contrary this Bill agrees to the combined system and there also I differ.

For these reasons, I hope the honourable members will not allow the reference of this Bill to the select committee.

Mr. A. H. Mackenzie: Many of the points that have been raised in the course of this discussion can, I think, be dealt with more suitably at the select committee stage. But there are one or two points of general principle to which I should like to refer. First of all, I should like to say a word or two about the remarks of Mr. Gavin Jones. I think that the speakers who followed him hardly did him justice. As I understood his attitude it was this: that if the Government intended to set up a new university, which was to be simply a degree factory, then he, for one, regarded that as wasteful effort and expenditure. I entirely agree with him. If that were the object of the Government, then I think that any money expended in the creation of the new university had much better be put in the Naini Tal lake. But, I think, that his statements were due to some misapprehension. It is not the intention of the Government to set up a new affiliating university. The intention is to transfer the affiliating side of the Allahabad University from Allahabad to Agra. The main question of principle in the

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Bill is simply whether it is desirable or not to have in one and the same university teaching and residential functions combined with affiliating functions. That is the simple issue which the Bill raises. The view that the Government have taken on this matter is that, the facts being what they are, it will make for educational efficiency if the affiliating side is separated from the teaching and residential side. Behind them the Government have on this question authoritative opinion. This was one of the questions which was carefully examined by the committee that was set up by the Bombay Government to consider the reorganization of university education in the Bombay Presidency. The committee, which was presided over by Sir Chimanlal Setalvad, raised the question whether the university at Poona should be at once a teaching, residential and affiliating university. Their view was that in such a scheme the attention and energy of those managing the university was likely to be concentrated on the more central and more closely incorporated institutions of the university, while the colleges outside would stand in some danger of being neglected or of not having their interests duly considered. Their report went on to say that the course of events in the recent development of the Allahabad University as disclosed in a letter to the committee from the Vice-Chancellor had suggested that these were no imaginary dangers. The letter of the Vice-Chancellor, which is a public document, says : " The weakest point that we have found in our reformed constitution lies in our mixed character. We have two sides : an internal side consisting of the teaching university itself and an external side consisting of all the colleges that were affiliated to us under our old constitution. For the two sides our Act has set up two distinct sets of bodies, culminating, however, in a common Academic Council, Executive Council and Court : and it has been my sad experience that there is an inevitable jealousy between the two sides, which hampers progress at each step." It is for the practical reason that the combination of affiliating functions with teaching and residential functions has not proved a success, but, on the contrary, has hampered progress, that the Government introduce this Bill.

The second question of principle to which I wish to refer is the one raised by my friend, Dr. Zia-ud-din Ahmad, as to whether Intermediate classes should be placed under the control of the new university of Agra. I listened attentively to what the two doctors have said on this question and I have heard nothing from either Dr. Zia-ud-din Ahmad or Dr. Ganesh Prasad to substantiate the view that the control of intermediate education has been a failure under the Board of High School and Intermediate Education.

Dr. Zia-ud-din has said so repeatedly ; I know that he believes it ; but I have still to find from him any evidence, anything that this House or any body of reasonable men could call evidence, to support his statement. On the contrary, the evidence that we have is against the view that he takes. Dr. Zia-ud-din referred to the committee which is now considering the question of intermediate education. That committee, of which he is a member, recently came unanimously to the opinion that, on the evidence before it, on the evidence it could collect, that is, all the evidence that Dr. Zia-ud-din or any other educationist can possibly have, there has been no deterioration in the standard of the intermediate

examination. Then again, Dr. Ganesh Prasad referred to the views of the Agra University Committee. That committee after very careful deliberation resolved that the control of the intermediate examination and the control of courses for the examination should remain with the Intermediate Board. But, as he pointed out, the committee proposed a compromise ; they proposed that while the board should continue to have control of the courses and to conduct examinations, the Agra University should inspect Intermediate classes attached to the degree colleges and should grant affiliation to such classes. That position was an illogical one, which they could not retain. The position was this—that the Agra University was to grant recognition for an examination conducted by another body. Surely recognition must be recognition for something ; it must be recognition for an examination. To ensure that recognition is given for good reasons, there must be proper inspection. Thus inspection, recognition and examination are all interdependent steps in a series. You cannot take away one without taking away the others. Therefore, I say, the position taken up ultimately by the Agra University Committee was an illogical position. But what I wish to emphasize now is that the Agra University Committee was of opinion that the Board of High School and Intermediate Education should continue to conduct the intermediate examination and should continue to lay down courses for that examination. Further, when this Bill was referred to the Executive Council of the Allahabad University, the Executive Council in turn referred the Bill to an important committee of educationists. I cannot recall the names of all those who were on that committee, but Dr. Tara Chand, Dr. Weir, Canon Davies and, I think, Pandit Hirday Nath Kunzru were members. That committee was unanimously of opinion that the control of intermediate education should remain with the Board of High School and Intermediate Education, and, therefore, when Dr. Zia-ud-din Ahmad suggests that Government have not behind them any weighty educational opinion in this matter I say that he is wrong.

Dr. Ganesh Prasad : What about the Executive Council ?

Mr. A. H. Mackenzie : The Executive Council recommended that the control of intermediate education in degree colleges should be transferred to the Agra University, but they passed their resolution only by the casting vote of the chairman.

Dr. Zia-ud-din Ahmad : On a point of personal explanation. Has the Director of Public Instruction ever asked the opinion of the Executive Councils of the different universities or invited some members who were definitely in favour of certain proposal ?

Hon'ble the President : That is hardly a matter of personal explanation.

Mr. A. H. Mackenzie : I say that the committee over which I am now presiding, the Intermediate Education Committee, did invite the opinion of numerous educationists in the province in regard to the reform of intermediate education and we have received not one suggestion on the lines of the suggestions made by Dr. Zia-ud-din Ahmad. Therefore, I repeat that in this matter Dr. Zia-ud-din Ahmad does not represent the bulk of educational opinion. He himself moved a motion in this House which practically aimed at the repeal of the Intermediate Education Act and, although he had the support of his two distinguished brother doctors, the House by a substantial majority rejected

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the resolution. I submit, Sir, that when he asks the Government to say if they have behind them the opinion of educationists and of the public in this matter, the reply is that the Government have behind them, as far as we can ascertain, the opinion both of educationists and the public.

Finally, I come to the question of expenditure, which was raised by my friend, Rai Bahadur Lala Mathura Prasad Mehrotra. I think he has misunderstood the remarks of the Hon'ble Minister in regard to the expenditure. The Hon'ble Minister in his speech meant that the net recurring cost to Government of establishing the Agra University would be approximately Rs. 11,000 in the first year and subsequently nil.

That is correct ; but the gross cost will be approximately Rs. 80,000.

The cost will be met largely by a reduction which will be made in the budget of the Allahabad University. The reduction is based on the estimate made by the Allahabad University itself of the savings that will result from the separation of the external side. I hope that this statement satisfies my honourable friend that the Government are not committed to a large recurring expenditure by passing this Bill.

I think, Sir, I have dealt with all the important questions that need be discussed at the present stage. In regard to matters of detail I reserve what I have to say for the select committee and for the subsequent discussion in the Council.

Dr. Shafa'at Ahmad Khan : I am reluctant at this stage to inflict a long speech on this House, but the remarks of Mr. Mackenzie seem to call for a reply.

Before I proceed further I must say that the way in which he conducted the meetings of the Agra University Committee and the manner in which he met the views of the various members of the committee, won the sympathy of the members thereof. It was a remarkably successful way of handling a very complicated, a very controversial and a very thorny problem. In this connexion I must also pay my quota of respect to the Hon'ble Minister of Education, who has shown great zeal in appointing a committee and later on in making arrangement for the passage of this Bill into law. After these remarks, Sir, I deem it my duty to call attention to the causes of quarrel—if I may say so, of friction between the internal and external side. I have no desire here to traverse the ground that has been traversed by the previous speakers. But as my honourable friend, Rai Bahadur Lala Mathura Prasad Mehrotra, has suggested that the votes secured at the meetings which passed these resolutions were secured, God knows how, I think that a very brief and succinct account of the meeting might be of use and of interest to some of the members. In the first Academic Council of the Allahabad University which I attended there were members from all parts of the United Provinces, members from Central India . . .

Hon'ble the President : The honourable member should not refer to the proceedings of the committee in detail.

Dr. Shafa'at Ahmad Khan : I am just illustrating my point, Sir.

Hon'ble the President : It is only a side issue,

Dr. Shafa'at Ahmad Khan : I am coming to the conclusion, Sir. All the members of the external side seemed to be jealous of the internal side, while the internal side itself appeared to regard the external people as a sort of outsiders. Now this exhibition of jealousy was introduced at the very first meeting. As the number of meetings increased this feeling manifested itself intensely and very keenly, and a resolution was passed on November 1, 1923, whereby the Council of Associated Colleges resolved that the separation of the two sides will be of benefit to the external side and to the internal side. So that it is clear that the views embodied in the Bill have the support of a large majority of public opinion in these provinces. And it is no less clear that if we tack the external side on to the internal side, both the external and internal sides will suffer, and it will impede the progress of both sides, the internal side and the external.

The Hon'ble Minister has pointed out in his speech that this Bill does not really aim at multiplication of functions. All it does is formalization of procedure which is implicit in the Allahabad University Act. As honourable members know, a provision in the Allahabad University Act was inserted about the university colleges in order that the contingency of Agra colleges developing into a university might be met. In 1924 Sir Claude de la Fosse appointed a small committee consisting of Professor Dunn, Iala Diwan Chand and two others. That committee met at Agra and formulated proposals for the development of the two colleges there into university colleges, but later on the ambition of these colleges soared higher, and demanded a university. So that the step that we are taking now is a step which is by no means revolutionary nor is it a step which is likely to cost an enormous sum. We are simply going to legalize a procedure which is laid down in the Allahabad University Act itself. All that we intend to do is that the headquarters of the external colleges will be formally established at Agra instead of at Allahabad. Of course, a Registrar and a number of clerks will be appointed, but that need not entail a very large expenditure. So that, so far as the Agra University is concerned, we will avoid those dangers which have been apprehended by several of the previous speakers. It will also not be a costly undertaking, because it will cost about Rs. 10,000 in the first year and in the succeeding years it is likely to cost much less. So financially the university will not be a burden on the tax-payer.

Now, Sir, I come to some of the details of the Bill. As a member of the Agra University Committee which held its meetings for about a month altogether at various places, I made certain proposals which are embodied in the Bill while certain others have been omitted. I do not wish to go into details of the various proposals at this stage of the Bill. I simply want to refer to certain points which have been raised by previous speakers. First of all, I take the question of the intermediate education. My honourable friends, Dr. Zia-ud-din, Dr. Ganesh Prasad and Hafiz Hidayat Husain, have all supported the insertion of a provision in the Bill, whereby the control of the intermediate examination might be vested in the colleges themselves. I do not think that they have advocated, nor do I think anybody else has advocated, the abolition of the Intermediate Board. Nobody has advocated that. All that we desire is that certain necessary, urgent and vital reforms may be introduced in the administration of the Intermediate Board. In the first place

[Dr. Shafa'at Ahmad Khan.]

it is necessary that the personnel of the intermediate colleges should be improved. In 1924 the Intermediate Education Board appointed me an Inspector to inspect the local Intermediate colleges at Allahabad, viz., the Kayasth Pathshala College and the Ewing Christian College. I have been an examiner of the Intermediate Board and have been in touch with a number of students who joined the third-year class of the university from the various Intermediate colleges and, therefore, I do happen to possess, of course not much, still some experience of the working of the Board. At one of the colleges I found that, though the standard was very good, still those fundamental conditions which were laid down by the Sadler Commission had not been carried out. They cannot be carried out in this province without a very large expenditure of money. That must be clear, it must be patent to every member of the Government that if you want to carry out the recommendations of the Sadler Commission in their entirety, fully and thoroughly, then you must be prepared to spend one crore of rupees a year on intermediate education alone, but if you cannot carry out these recommendations, if the personnel of your colleges is not satisfactory, if the standard of instruction has deteriorated or has not kept pace with the standard, say, in the universities, how can you say that a system launched under such auspices and supported really by persons who favoured the proposal only out of sympathy with the originator of the proposal should not be modified? If you really admit that this system has not been satisfactory, if you admit that it is not successful, if you admit for once that the standard of education has not risen, then you cannot turn round and say:—"No, you must give us more time; we must have some few years more so that we may spend several lakhs more" and then you may come round and say:—"Oh yes, we admit that the system has failed"? What guarantee is there that the same defects, the same deterioration will not persist and will not be felt in the succeeding years as have been felt in the past. If you can say that there is possibility of improvement, that there is possibility of progress, that it really meets with the demand and needs of the province, then, Sir, we will be prepared to back it up, but if, on the other hand, it goes on showing marked decline in quality, then in that case I submit it is the duty of every member of the Council to say, "thus far and no further." It is the duty of every person to see that these colleges do not go on multiplying but to try to improve the quality of the existing colleges alone. Do not go after numbers; do not try to have an unlimited number of intermediate colleges, but see that the present colleges improve their quality. Mr. Mackenzie has said that Dr. Zia-ud-din does not represent the educational opinion of the province.

Mr. A. H. Mackenzie: In this matter.

Dr. Shafa'at Ahmad Khan: In this matter. Now it is very difficult for a person, specially for myself, to say which person represents the public opinion of the province and which does not. There must be some official organ whereby the opinion can be represented, and the only system that has been devised is the system of representative Government. Dr. Zia-ud-din is supposed to represent at least the sentiments of the constituency. This much we must admit. In the next place he is supposed to know something about the work of a very big institution, the Muslim

University of Aligarh, which is by no means small, and by no means unknown to Mr. Mackenzie. So that he does really happen to possess some experience, and I agree with Dr. Zia-ud-din when he says that the Intermediate Education Act has not really worked well ; that it has not led to any improvement in the quality of the students or in the quality of the teachers, and I say that, unless some radical measures are devised, unless the Education department introduces some reforms which will meet the points that have been raised by the previous speakers, there is no likelihood of any progress or any development in intermediate education on sound lines.

Now having dealt with this point, I should like to refer to another point that has been raised by my friend, Dr. Zia-ud-din, and that is about the special officer who will be appointed by the Government. I do not think I am revealing the secrets of the committee when I say that I was against the appointment of this special officer. In my humble opinion the special officer will not commend the same prestige, he will not have the same influence and the same authority as the first Vice-Chancellor appointed by the Chancellor. I am speaking from personal experience. In 1922 when the Allahabad University was reorganized, Sir Claude de la Fosse, who was appointed first Vice-Chancellor, constituted a provisional Executive Council to advise him on various matters concerning with the reorganization of that university. I was one of the members of that committee and I can say that the work we did in the provisional Executive Council for the six months was of the utmost value to the university. I have an experience of that Executive Council and also of the present Executive Council of the Allahabad University. The work done in 1922 under the auspices of Sir Claude de la Fosse was much better, more thorough and more useful to the University, than the work done during the last three years. In saying so, I do not mean any disparagement to the present Executive Council of the Allahabad University. The first Vice-Chancellor is not by any means an ornamental person. He it is who will put life into the University, who will really create the university and will build up sound traditions of university administration. He will also co-ordinate and link up the various spheres and activities and the numerous functions that have to be performed from day to day. We must have a man who will inspire confidence and respect. The special officer, in my opinion, will not possess that representative character which will be enjoyed by the person who is appointed for the first two years, for instance, by the Chancellor. So, Sir, I am against the appointment of a special officer.

As regards the honorary Vice-Chancellor, I am afraid I cannot agree with Dr. Zia-ud-din when he says that a paid Vice-Chancellor may also be appointed. I have heard in Allahabad, that the experiment of appointing an honorary Vice-Chancellor by the Chancellor had really proved a success. The Chancellor appointed a number of High Court Judges, some of whom possessed very large administrative experience and they really worked with devotion and with zeal, and, let me add, with a knowledge that has not been surpassed by a number of other universities possessing salaried Vice-Chancellors. The experiment, therefore, proved very useful, and there is no reason whatsoever why we should not have an honorary Vice-Chancellor for the Agra University.

The next point to which I would like to draw the attention of this Council is section 25 relating to teachers employed in the University.

[Dr. Shafa'at Ahmad Khan.]

I find, when I compare the Allahabad University Act with the present Bill, that the security of tenure of teachers is not laid on a really firm foundation as was done in the case of the Allahabad University. If honourable members will refer to one section of the Act of 1921, they will find that provision was made for a tribunal in the case of a dispute as regards the contract of the teachers. If there was any question as regards the interpretation of the contract with a servant of the university the latter has a right to refer the matter to a tribunal, some of whose members are to be indicated by him. Now this provision has been left out in the Agra University Bill. I think that there should be such a provision. There should also be a provision with regard to the provident fund, because we must have teachers in the new university who are really able to devote all the time and all the knowledge which they can devote and will not be bothered by the care and by the anxiety that is caused by lack of security of tenure. I hope the Hon'ble Minister will note this and make the necessary changes.

The next point to which I should draw the attention of the House is that in my opinion the size of the Senate is too large. The members of the Agra University Committee, when they met, had the result of the working of the Allahabad University before them and they acted upon the plan that those defects in the Allahabad Act which had been experienced and felt by the members, should be removed, as far as possible, in the present Bill. Consequently, we reduced the size of the Senate, we reduced the size of the Academic Board and we have also reduced the size of the faculties. But, I think in the case of the faculties and also the Senate, the size could be reduced still more. I will not give details, because that can be done in select committee and will be discussed when the Bill comes up to the Council. But I think the Senate is too large and the faculties are also in my opinion unwieldy, especially the faculty of arts. I have calculated the number of persons who will be members of the faculty of arts and I think it comes to about 45 : this is too large a number for one faculty. The other faculties, especially that of commerce, would not be less than 50, because you have to get representatives of commerce and arts and other faculties in order that they might give advice upon questions connected with commerce and industry. Hence, as regards the Senate and the faculties I think the size of these two bodies should be reduced. The Academic Board, in my opinion, should be kept intact. The difficulty of the present Academic Council of the Allahabad University has been that it is too large, that it does not meet more than twice a year, and there are a number of points in the university which need immediate attention and which have to be dealt with on the spot and as soon as possible. Consequently, a large amount of work accumulates, and a number of items are discussed in the meetings of the Council which ought to have been discussed three or four months before. This is not the case as regards Aligarh. I have been a member of the Academic Council of the Aligarh University. I believe the meetings of the Academic Council of that university are held on the average every month. This is a most convenient method of despatching business. Consequently, I think, the Academic Board which has been constituted should be left intact—the size of the board should not be reduced. There is a proposal that the board should be abolished altogether. I do not believe in that in the least. I think one of the

contributions of the Sadler Commission was that they instituted an Academic Council. In that council the members of the faculties of arts, of commerce, of law, of medicine and of other faculties meet in one place and exchange views and discuss things that are common to them. This creates an *esprit de corps* in your teaching body. So the Academic Council is the parliament of the university teachers, and I think it should be kept intact and should not be abolished at all, because you want a certain co-ordinating authority which could link up the various faculties and give authoritative opinion. Before I sit down I should like to refer to one more point.

Hon'ble the President : I hope the honourable member will be brief?

Dr. Shafa'at Ahmad Khan : I will only refer to one point briefly. I do not wish, Sir, to add anything to the speech of the Director of Public Instruction. He referred to the swing of the pendulum which has been manifested concerning the affiliating universities. In 1920-21 we were all enthusiasts for Sadlerization—everything must be Sadlerized, Intermediate education, universities and teachers must undergo a process of Sadlerization, quick and expeditious. But the university for which that commission was appointed, that university has not really adopted those proposals. The Bombay University committee that was appointed, did not decide definitely in favour of the unitary teaching university. But I will give one instance and that is Madras. Recently the Madras Government has launched the Andhra University. That university cannot by any stretch of imagination be called a typical residential university at all. It really exhibits many of the features of the affiliating university. Consequently, we are not against the current of expert opinion when we advocate the establishment of an affiliating university at Agra.

Hon'ble Rai Rajeshwar Bali : I think I have every reason to feel gratified at the reception which this Bill has received at the hands of the honourable members. I shall not take up the time of the House by repeating again what I said before, or by repeating the arguments which have been advanced by the many supporters of the Bill in reply to the criticism made by my two honourable friends, whose opinion I always value. It appears to me that the criticism of both the honourable members has been made under certain misapprehensions. They think that the establishment of a university at Agra means an addition not only to the number of universities in these provinces but also to the charge which the tax-payer will have to bear for the purposes of higher Education. Several of my honourable friends have spoken on these two points and have made it clear, and I can only repeat that the establishment of an affiliating university of the type that we propose at Agra does not mean the establishment of a new university. It only means the transfer of the external side of the Allahabad University from Allahabad to Agra. There will be no multiplication of functions, there will be no extra recurring expenditure involved. My friend, Mr. Mehrotra, thought that I was inconsistent when I said that the expenditure of Rs. 10,000 or Rs. 11,000 would be incurred only in the first year, and that no additional recurring expenditure will be required in subsequent years. The Director of Public Instruction has made it clear that I referred only to the net expenditure. As a matter of fact the gross expenditure for the new university would be from seventy to eighty thousand per annum. But

[Hon'ble Rai Rajeshwar Bali.]

that will be met from examination fees, as well as from the savings which will accrue by reducing the grant to the Allahabad University, as a result of separation. This reduction is not an arbitrary reduction which is proposed to be made by Government, but it has been recommended by the Allahabad University itself. The reason why we need an extra ten or eleven thousand in the first year is that during the first year we shall have to pay the charges of the special officer and his establishment. These charges will not be needed in subsequent years. Therefore, it can reasonably be presumed that the Agra University is going to cost almost nothing in the shape of recurring expenditure to the tax-payer of these provinces. If it is not going to cost anything extra, and if by shifting the external side of the Allahabad University the result will be that on the one hand an impetus will be given to the associated colleges to develop themselves better than they can do under the present conditions and, on the other hand, that greater freedom will be given to the Allahabad University to work out its own destiny along the lines laid down for it, I think it will be to the advantage of higher education in these provinces that this separation should take place.

I will not deal at present with the detailed criticisms that have been made by several of my friends, particularly by Dr. Zia-ud-din and by Dr. Shafa'at Ahmad Khan, regarding the various provisions of this Bill. The best opportunity to deal with them will be when the Bill is discussed in the select committee or when it comes back from the select committee for discussion in this House. But there is one point on which I cannot be silent, because it relates to an important matter of policy. That is the relation of intermediate education to the Agra University. It has been suggested that the Intermediate Education Act has been a failure. A number of defects have been pointed out regarding its working. I would readily admit that in its working the Act has not been what it was expected to be, or what we all desired it to be, but that has been mainly due to financial reasons. There are a number of defects which have made themselves evident in its working, but that does not mean that the system needs radical change. I think that sufficient trial has not yet been given to it. Let the committee which has just been appointed to look into those defects make its recommendations and let those recommendations be considered by the Government and given effect to; it is only after this if we find the system not working well that there will be occasion and opportunity for considering whether any radical change is required or not. But till we have done our utmost to work the Act in a satisfactory manner, and tried to remove the defects that come to light I think it will not be wise if we try to scrap it. For, as I said on the occasion of the debate on the resolution of my friend, Dr. Zia-ud-din Ahmad, the Intermediate Education Act attempted to make a departure of a very fundamental character in our present system of education. Indeed, it will be against any continuity of policy if only after three or four years, when lakhs and lakhs of rupees have already been spent as a result of the Intermediate Education Act, the Act is allowed to be scrapped. It has been stated by my honourable friend, Dr. Shafa'at Ahmad Khan, that he does not want to scrap the Act, but if, as suggested by him, we

allow the Agra University to conduct and control the intermediate examination, it will, I submit, be nothing short of scrapping the Act. For in that case there will be very much less left for the Intermediate Board to do. Therefore, I feel that the time has not yet come when we may attempt to interfere with the Intermediate Education Act. But I beg to assure my honourable friends that it is not out of any stubbornness on my part, as imputed to me by some of them, that I have taken the present position in regard to intermediate education. I have stated the facts of the case fully in my opening speech, and I do not think I can add very much to what I have already said at this stage.

In conclusion I trust that in the select committee we shall be able to work together with the single-minded intention of improving the Act as far as possible, and thus to improve the system of university education in these provinces.

Hon'ble the President: The motion before the House is that the Agra University Bill be referred to a select committee consisting of—

Dr. Ganesh Prasad,

Dr. Zia-ud-din Ahmad,

Rai Bahadur A. C. Mukerji,

Mr. A. H. Mackenzie,

Rai Bahadur Babu Vikramajit Singh,

Khan Bahadur Hafiz Hidayat Husain,

Pandit Nanak Chand,

Kunwar Jagdish Prasad,

The Legal Remembrancer and the Hon'ble Minister as Chairman, and that the committee be asked to report by July 15. As is generally my practice, I shall divide this motion into parts; the first as regards the reference to the select committee, the second as regards the personnel, and the third as regards the date of the report.

The first part of the motion was put and adopted.

As regards the personnel of the select committee, Pandit Nanak Chand proposed the addition of the names of Rai Bahadur Thakur Hanuman Singh and Lieutenant Raja Durga Narayan Singh. His proposal was seconded by Raja Jagannath Baksh Singh. Mr. Muhammad Aslam Saifi proposed the name of Dr. Shafa'at Ahmad Khan and Mr. Masud-uz-Zaman seconded his proposal.

The amendment was put and adopted: the second part, as amended, was put and adopted.

As regards the third part of the motion Dr. Zia-ud-din Ahmad proposed that the select committee be asked to report by July 20, instead of July 15.

The original motion that the select committee should report by July 15, was put and adopted. Dr Zia-ud-din Ahmad's amendment therefore fell.

Hon'ble the President : The motion, as amended and passed by the Council, runs as follows:—

That the Agra University Bill be referred to a select committee consisting of—

Dr. Ganesh Prasad,

Dr. Zia-ud-din Ahmad,

Rai Bahadur A. C. Mukerji,

Mr. A. H. Mackenzie,

Rai Bahadur Babu Vikramajit Singh,

Khan Bahadur Hafiz Hidayat Husain,

Pandit Nanak Chand,

Kunwar Jagdish Prasad,

The Legal Remembrancer,

Rai Bahadur Thakur Hanuman Singh,

Lieut. Raja Durga Narayan Singh, and

Dr. Shafa'at Ahmad Khan, with the Hon'ble the Minister as Chairman,

and that the committee be asked to report by July 15.

The Council was then adjourned till Monday, June 28.

APPENDIX A.

(See page 2 supra.)

Statements referred to in answer to Council question No. 1 for June 25, 1926, asked by KHAN BAHADUR HAFIZ Hidayat Husain Sahib.

STRENGTH OF DISTRICT BOARDS.

Name of district board.	In 1923.					In 1925-26.				
	Elected members.					Nominated members.				
	Hindu.	Muslim.	Indian Chris- tian.	Depressed classes.	Others.	Hindu.	Muslim.	Indian Chris- tian.	Depressed classes.	Others.
1. Dehra Dun	11	4	..	..	15	1	..	..	1	..
2. Saharanpur	16	7	..	..	23	1	..	..	1	..
3. Musafarnagar	22	9	..	..	31	..	..	..	..	..
4. Meerut	28	12	..	..	40	1	..	..	..	..
5. Bulandshahr	24	10	..	..	34	..	..	..	..	..
6. Aligarh	20	7	..	..	27	1	..	..	..	..
7. Muttra	19	6	..	..	25	1	..	..	..	..
8. Agra	31	7	..	..	38	1	..	..	..	..
9. Mainpuri	23	9	..	..	32	..	..	..	..	..
10. Etah	19	6	..	..	25	1	..	..	..	..
11. Bareilly	20	9	..	..	29	..	..	..	..	..
12. Bijoor	16	8	..	..	24	1	..	..	..	..
13. Budann	23	8	..	..	31	..	..	..	..	..
14. Moradabad	25	12	..	..	37	2	..	..	..	..
15. Shahjahanpur	18	6	..	..	24	..	..	..	..	..
16. Pilibhit	12	5	..	..	17	..	..	..	..	..
17. Farrukhabad	23	9	..	..	32	2	..	..	..	..
18. Etawah	20	3	..	..	23	..	..	..	..	..
19. Cawnpore	27	9	..	..	36	..	..	..	..	..
20. Fatehpur	15	5	..	..	20	..	..	..	..	..
21. Allahabad	29	10	..	..	39	1	..	..	..	..

STRENGTH OF DISTRICT BOARDS—(concluded).

Name of district board.	In 1933.										In 1935-36.														
	Elected members.					Nominated members.					Elected members.					Nominated members.									
	Hindu.	Muslim.	Indian Chris- tians.	Depressed classes.	Others.	Total.	Hindu.	Muslim.	Indian Chris- tians.	Depressed classes.	Others.	Total.	Hindu.	Muslim.	Indian Chris- tians.	Depressed classes.	Others.	Total.	Hindu.	Muslim.	Indian Chris- tians.	Depressed classes.	Others.	Total.	Grand total of both elected and nomi- nated members.
22. Gorakhpur ..	80	10	..	..	..	40	30	10	..	..	..	40	30	10	..	..	..	40	1	..	..	..	..	..	43
23. Basti ..	28	12	..	..	..	40	28	12	..	..	..	40	28	12	..	..	..	40	2	..	..	..	..	..	43
24. Azamgarh ..	28	9	..	..	..	37	36	10	..	..	..	46	36	10	..	..	..	46	..	1	..	..	..	..	47
25. Benares ..	20	7	..	..	..	27	29	6	..	..	..	35	29	6	..	..	..	35	..	..	..	..	..	..	35
26. Mirzapur ..	16	5	1	1	..	23	20	4	..	..	..	25	20	4	..	..	..	25	..	1	..	..	..	..	27
27. Jaunpur ..	28	10	..	..	..	38	27	7	..	..	..	34	27	7	..	..	..	34	..	..	..	..	..	..	34
28. Ghazipur ..	18	6	..	..	..	24	26	31	..	..	..	57	26	31	..	..	..	57	..	1	..	..	..	..	58
29. Ballia ..	18	6	..	..	..	24	23	7	..	..	..	30	23	7	..	..	..	30	..	1	..	..	..	..	31
30. Jhansi ..	22	4	..	..	..	26	28	3	..	..	..	31	28	3	..	..	..	31	..	1	..	..	..	..	32
31. Jalaun ..	16	3	..	..	..	19	21	16	3	..	..	40	21	16	3	..	..	40	..	..	..	..	..	..	40
32. Hamirpur ..	18	6	..	..	..	24	1	..	..	..	..	1	1	..	..	..	..	1	..	..	..	..	..	..	2
33. Banda ..	23	8	..	..	..	31	33	18	..	..	..	51	33	18	..	..	..	51	..	1	..	..	..	..	52
34. Almor ..	19	2	1	..	..	22	24	19	2	1	..	26	24	19	2	1	..	26	..	..	..	..	..	..	26
35. Naini Tal ..	21	9	..	..	..	30	34	20	5	..	..	39	34	20	5	..	..	39	..	..	..	..	..	..	39
36. Garhwal ..	21	2	..	..	..	23	25	21	5	..	..	28	25	21	5	..	..	28	..	..	..	..	..	..	28
37. Lucknow ..	14	5	..	..	..	19	21	14	7	..	..	28	21	14	7	..	..	28	..	1	..	..	..	..	29
38. Unao ..	22	7	..	..	..	29	31	21	8	..	..	39	31	21	8	..	..	39	..	..	..	..	..	..	39
39. Rae Bareilly ..	23	8	..	..	..	31	33	21	8	..	..	42	33	21	8	..	..	42	..	..	..	..	..	..	42
40. Sitapur ..	25	8	..	..	..	33	35	26	9	..	..	44	35	26	9	..	..	44	..	..	..	..	..	..	44
41. Hardoi ..	24	8	..	..	..	32	34	24	8	..	..	46	34	24	8	..	..	46	..	..	..	..	..	..	46
42. Kheri ..	15	5	..	..	..	20	22	24	8	..	..	34	22	24	8	..	..	34	..	..	..	..	..	..	34
43. Fyzabad ..	23	9	..	..	..	32	39	27	9	..	..	45	39	27	9	..	..	45	..	..	..	..	..	..	45
44. Gonda ..	20	8	..	..	..	28	30	28	11	..	..	39	30	28	11	..	..	39	..	..	..	..	..	..	39
45. Bahraich ..	20	9	..	..	..	29	31	25	8	..	..	44	31	25	8	..	..	44	..	..	..	..	..	..	44
46. Sultanpur ..	21	8	..	..	..	29	34	31	7	..	..	42	34	31	7	..	..	42	..	..	..	..	..	..	42
47. Partabgarh ..	21	7	..	..	..	28	30	31	7	..	..	41	30	31	7	..	..	41	..	..	..	..	..	..	41
48. Bara Banki ..	17	8	..	..	..	25	27	24	11	..	..	36	27	24	11	..	..	36	..	..	..	..	..	..	36

STRENGTH OF MUNICIPAL BOARDS.

Name of municipality.	In 1928.						In 1925-26.					
	Elected members.			Nominated members.			Elected members.			Nominated members.		
	Hindu.	Muslim.	Indian Chris- tian.	Depressed classes.	Others.	Total.	Hindu.	Muslim.	Indian Chris- tian.	Depressed classes.	Others.	Total.
1. Dehra Dun	5	3	..	..	..	8	6	4	..	..	..	1
2. Mussoorie	4	1	..	..	2	8	16	..	..	..	..	1
3. Saharanpur	5	7	..	..	3	8	14	..	..	..	..	1
4. Harwar	10	2	..	..	3	8	15	10	3	..	..	13
5. Deoband	6	5	..	..	1	2	10	3	5	..	..	8
6. Roorkhee	5	3	..	..	1	3	11	6	3	..	..	12
7. Musaffarnagar.	6	4	..	..	1	5	12	8	5	..	..	15
8. Kairua	3	5	..	..	..	8	8	5	3	..	..	13
9. Meerut	6	7	..	..	..	13	8	5	3	..	..	15
10. Ghaziabad	6	3	..	..	..	9	17	3	7	..	..	15
11. Hapur	4	1	..	..	..	5	11	3	4	..	..	11
12. Bareilly	4	2	..	..	..	6	18	7	4	..	..	11
13. Bulandshahr	4	2	..	..	..	6	4	2	3	..	..	6
14. Khurja	6	4	..	..	..	10	4	3	4	..	..	7
15. Sikandarabad	5	3	..	..	..	8	12	6	4	..	..	10
16. Koli (Aligarh)	7	5	..	..	..	12	15	8	5	..	..	13
17. Hathras	10	2	..	..	..	12	3	3	2	..	..	9
18. Agra	6	4	..	..	..	10	1	2	4	..	..	13
19. Sitandra Rao	5	4	..	..	..	9	11	6	4	..	..	10
20. Muttra	9	3	..	..	..	12	11	4	4	..	..	13
21. Brindaban	9	..	..	..	..	9	11	3	4	..	..	9
22. Agra	10	6	..	..	..	16	14	8	3	..	..	13
23. Ferozabad	6	3	..	..	..	9	9	6	4	..	..	16
24. Mainpuri	..	..	..	..	..	..	11	6	4	..	..	10

* Both ex officio Tahsildar and Joint Magistrate, Muttr .
+ " " " " " " Agra

STRENGTH OF MUNICIPAL BOARDS—(concluded).

Name of municipality.	In 1923.										In 1925-26.									
	Elected members.					Nominated members.					Elected members.					Nominated members.				
	Hindu.	Muslim.	Indian Chris- tian.	Depressed classes.	Others.	Total.	Hindu.	Muslim.	Indian Chris- tian.	Depressed classes.	Others.	Total.	Hindu.	Muslim.	Indian Chris- tian.	Depressed classes.	Others.	Total.	Grand total of both elected and nomi- nated members.	
25. Etah	5	3	..	..	..	8	11	..	..	..	..	10	9	..	..	..	..	8	19
26. Soron	9	1	..	..	..	10	11	..	..	..	..	7	5	..	..	..	..	9	12
27. Kasganj	4	2	..	..	..	6	11	..	..	..	..	11	6	..	..	..	..	9	22
28. Jalesar	4	2	..	..	..	6	11	..	..	..	..	7	4	..	..	..	..	9	11
29. Bareilly	4	2	..	..	..	6	11	..	..	..	..	7	4	..	..	..	..	9	11
30. Bijoor	9	5	1	..	..	15	..	..	..	..	..	22	9	..	..	..	..	19	41
31. Chandpur	3	5	..	..	..	8	1	..	..	..	..	10	4	..	..	..	..	14	24
32. Nagina	3	5	..	..	..	8	1	..	..	..	..	13	6	..	..	..	..	19	26
33. Dhampur	6	9	1	..	..	16	1	..	..	..	..	22	6	..	..	..	..	28	38
34. Najibabad	4	6	..	..	..	10	1	..	..	..	..	11	4	..	..	..	..	15	25
35. Budau	4	6	..	..	..	10	1	..	..	..	..	12	4	..	..	..	..	16	28
36. Ujhani	4	6	..	..	..	10	1	..	..	..	..	11	4	..	..	..	..	15	25
37. Sahaswan	4	2	..	..	..	6	1	..	..	..	..	7	4	..	..	..	..	11	11
38. Moradabad	5	8	..	..	..	13	1	..	..	..	..	15	5	..	..	..	..	20	35
39. Chandausi	6	8	..	..	..	14	1	..	..	..	..	16	4	..	..	..	..	20	32
40. Amroha	4	7	..	..	..	11	1	..	..	..	..	13	4	..	..	..	..	17	26
41. Sambhal	4	7	..	..	..	11	1	..	..	..	..	13	4	..	..	..	..	17	26
42. Shahjahanpur	5	4	..	..	..	9	1	..	..	..	..	10	4	..	..	..	..	14	24
43. Tilhar	4	5	..	..	..	9	1	..	..	..	..	11	4	..	..	..	..	15	26
44. Pilibhit	5	4	..	..	..	9	1	..	..	..	..	11	4	..	..	..	..	15	26
45. Bawalpur	5	3	..	..	..	8	..	..	..	..	..	11	5	..	..	..	..	16	26
46. Etawah	8	5	..	..	..	13	..	..	..	..	..	15	8	..	..	..	..	23	33
47. Cawnpore	19	10	..	..	..	29	3	..	..	..	..	36	19	..	..	..	..	55	85
48. Fatehpur	5	4	..	..	..	9	..	..	..	..	..	10	5	..	..	..	..	15	24
49. Fatehpur-cum- Farashabad.	9	5	..	..	..	14	2	..	..	..	..	16	9	..	..	..	..	25	39
50. Kanauj	5	3	..	..	..	8	1	..	..	..	..	9	5	..	..	..	..	14	24

APPENDIX B.

(See page 3 *supra*.)

Statement showing the particulars concerning town areas in these provinces called for in starred question No. 2 for June 25, 1926, asked by KHAN BAHADUR HAFIZ HUDAyat HUSAIN SAHIB.

Serial number.	Name of district.	Name of town area.	Population.			Members of town area committees.					Remarks.
			Hindu.	Muslim.	Total.	Hindu.	Muslim.	Indian Christian.	Depressed classes.	Others.	Total.
1		Ambehita	1,368	2,640	3,908	3	2	..	..	..	6
2		Sultaanpur	2,120	2,123	4,243	5	..	..	..	..	5
3		Gangoh ..	4,965	6,772	11,737	4	3	..	..	..	7
4		Jabera ..	1,939	710	2,649	2	1	..	..	..	3
5	Saharanpur ..	Manglaur ..	2,054	6,651	8,705	3	4	..	..	..	7
6		Nakur ..	1,993	1,854	3,847	3	2	..	..	..	5
7		Nauanta ..	1,568	1,902	3,470	3	2	..	..	..	5
8		Rampur ..	3,010	2,543	5,553	3	2	..	..	..	5
9		Sirawa ..	1,462	1,408	2,870	2	1	..	..	..	3
10		Tiron ..	1,881	1,124	3,005	2	1	..	..	..	3
11		Badhana	2,902	1,957	4,859	3	2	..	..	..	5
12		Charthawal	3,599	2,181	5,780	4	1	..	..	..	5
13		Jalalabad	1,824	2,676	4,500	2	3	..	..	..	5
14		Jamath ..	2,434	2,918	5,352	4	1	..	..	..	5
15		Jhinjhana	1,836	2,053	3,889	2	3	..	..	..	5
16	Muzaffarnagar	Khatoli ..	3,098	3,765	6,863	3	2	..	..	..	5
17		Miranpur	3,105	2,783	5,891	4	1	..	..	..	5
18		Purkasi ..	2,064	3,195	5,259	2	3	..	..	..	5
19		Shahpur ..	1,342	1,976	3,318	2	2	..	1	..	5
20		Shamli ..	5,502	2,175	7,677	4	1	..	..	..	5
21		Thana Bhawan	3,326	3,453	6,779	3	3	..	..	..	5

33	Beghat ..	9,601	1,657	4,318	3	3	3	3	5
34	Abdulpur ..	938	1,269	2,197	3	3	3	3	5
35	Aminnagar-Sarai ..	1,712	392	2,104	3	3	3	3	5
36	Chaprauli ..	4,570	924	5,494	4	1	1	1	5
37	Dama ..	1,753	2,181	3,934	4	1	1	1	5
38	Farridnagar ..	2,494	3,825	6,319	3	2	2	2	5
39	Farrukhnagar ..	1,301	783	2,084	3	3	3	3	5
40	Garmukhtesar ..	4,308	1,798	6,006	3	3	3	3	5
41	Kanker Khara and ..	3,155	1,311	4,466	3	3	3	3	5
42	Khera Bazar (Union) ..	6,759	1,421	8,180	7	1	1	1	7
43	Khehra ..	2,192	2,177	4,369	4	1	1	1	5
44	Lamer Lawar Khas ..	1,647	1,209	2,856	1	2	2	2	5
45	Lon ..	2,129	1,656	3,785	3	2	2	2	5
46	Muradnagar ..	4,040	1,042	5,082	4	1	1	1	5
47	Parbhathgarh ..	3,255	1,743	5,008	3	2	2	2	5
48	Phalanda ..	9,029	970	9,999	3	3	3	3	5
49	Arangabad ..	2,340	2,566	4,915	3	3	3	3	5
50	Bilaspur ..	1,690	1,073	2,663	2	1	1	1	5
51	Chakari ..	2,590	1,731	4,321	3	3	3	3	5
52	Dankaur ..	3,303	1,128	5,037	4	1	1	1	5
53	Gulaothi ..	2,723	2,780	5,503	1	4	4	4	5
54	Jahangirabad ..	7,359	3,633	10,991	6	1	1	1	7
55	Jewar ..	4,343	2,014	6,357	5	3	3	3	5
56	Kakur ..	1,820	920	2,745	3	3	3	3	5
57	Pabasu ..	2,318	2,305	4,623	3	3	3	3	5
58	Rabopura ..	2,688	1,400	4,088	3	3	3	3	5
59	Shikarpur ..	5,312	4,220	9,532	4	1	1	1	7
60	Siana ..	4,583	2,570	7,153	4	1	1	1	5
61	Baiswan ..	1,798	385	2,183	2	1	1	1	3
62	Bijagath ..	1,737	173	1,910	3	3	3	3	3
63	Chara ..	1,104	956	2,060	1	2	2	2	3
64	Harduaganj ..	4,511	884	5,395	4	1	1	1	5
65	Hasayan ..	1,529	459	1,988	3	3	3	3	3
66	Jalali ..	4,157	2,498	6,655	3	5	5	5	5
67	Kachura ..	2,500	200	2,700	3	3	3	3	3
68	Kanraganj ..	1,790	1,611	3,401	4	1	1	1	5
69	Khan ..	3,286	946	4,232	4	2	2	2	5
70	Mendu ..	3,068	791	3,859	3	1	1	1	3
71	Mursan ..	2,407	475	2,882	4	1	1	1	5

Serial number	Name of district.	Name of town area.	Population.			Members of town area committees.					Remarks.
			Hindu.	Muslim.	Total.	Hindu.	Muslim.	Indian Christian.	Depressed classes.	Others.	
61	Aligarh—(continued).	Pilkhana ..	1,559	2,464	2,838	3	2	..	..	..	2
62		Pardlingar ..	9,970	1,135	8,705	3	..	..	..	..	2
63		Esani ..	2,567	155	8,153	3	..	..	..	..	2
64		Teppal ..	2,110	1,188	3,298	3	2	..	..	..	2
65	..	Baldeo ..	2,464	86	2,550	3	..	..	..	..	2
66		Chhata ..	5,694	1,056	6,750	5	..	..	..	..	2
67		Farrak ..	1,141	906	2,046	2	1	..	..	..	2
68		Gobardhan ..	2,938	266	4,164	3	..	..	..	..	2
69	Muttra ..	Gokul ..	2,428	45	2,471	3	..	..	..	..	2
70		Mahaban ..	9,441	515	2,966	3	2	..	..	..	2
71		Radha Kund ..	1,809	60	1,869	2	..	..	..	..	2
72		Baya ..	1,703	699	2,403	2	1	..	..	..	2
73	..	Sadabad ..	1,703	1,471	3,173	4	1	..	..	..	2
74		Sahpau ..	3,804	418	2,782	4	1	..	..	..	2
75		Shergarh ..	1,877	1,619	3,496	5	2	..	..	..	2
76		Soakh ..	2,953	608	2,971	2	1	..	..	..	2
77	..	Achnera ..	3,940	1,160	4,100	4	1	..	..	..	2
78		Finahat ..	3,025	375	3,400	3	..	..	..	..	2
79		Bah ..	3,314	619	2,538	5	..	..	..	..	2
80		Fatehabad ..	2,792	907	3,699	3	2	..	..	..	2
81	Agra ..	Shamshabad ..	1,451	1,101	2,552	3	..	..	..	..	2
82		Itmadpur ..	2,740	980	3,720	4	1	..	..	..	2
83		Jagner ..	2,914	186	3,099	5	..	..	..	..	2
84		Railway Settlement of Tundla.	1,990	785	2,775	4	1	..	..	..	2
85	Mainpuri ..	Bhongson ..	3,356	1,450	4,806	4	1	..	..	..	2
86		Bewar ..	2,981	463	3,444	4	1	..	..	..	2
87		Kawal ..	3,116	1,513	4,629	3	2	..	..	..	2
88		Karauli ..	3,400	934	4,334	4	1	..	..	..	2

No.	Name	Area in Acres	Population	Revenue in Rs.	Revenue in Annas
89	Pharcha ..	1,474	383	1,837	..
90	Jirans ..	2,661	686	3,386	..
91	Sirasganj ..	4,181	740	4,921	..
92	Aliganj ..	8,249	1,944	5,283	..
93	Awasapur ..	1,210	255	1,466	..
94	Awagath ..	8,471	896	4,864	..
95	Bilram ..	1,873	1,819	3,681	..
96	Mohanpur ..	1,876	502	2,377	..
97	Nidhami Kalan ..	2,009	768	2,777	..
98	Patali ..	8,582	1,035	4,617	..
99	Rampur ..	8,027	814	3,841	..
100	Rahawar ..	2,323	810	5,832	..
101	Sakit ..	2,441	902	3,343	..
102	Faridpur ..	3,387	8,495	7,382	..
103	Fatehganj East ..	1,438	759	2,187	..
104	Nawabganj ..	1,906	1,954	3,760	..
105	Richha ..	624	2,620	3,244	..
106	Serauli ..	2,137	3,200	5,337	..
107	Senthal ..	1,111	3,025	4,186	..
108	Shahi ..	1,433	1,724	3,157	..
109	Sheopuri ..	3,860	608	3,968	..
110	Shingara ..	1,064	2,646	3,710	..
111	Amalgarb ..	1,036	4,371	5,406	..
112	Jhaln ..	2,719	2,719	5,517	..
113	Kherakpur ..	8,327	10,798	14,619	..
114	Haldaur ..	8,437	743	4,185	..
115	Mandawar ..	2,110	4,226	6,386	..
116	Nihatur ..	2,086	7,149	3,185	..
117	Sheohara ..	2,369	6,597	8,966	..
118	Sherkot ..	2,322	10,159	18,488	..
119	Alampur ..	8,419	2,858	5,777	..
120	Eisauli ..	2,764	2,062	4,886	..
121	Usehat ..	1,184	856	1,930	..
122	Dataganj ..	1,450	1,051	2,501	..
123	Gumnaur ..	2,187	3,612	5,749	..
124	Islampagar ..	3,137	2,727	5,864	..
125	Katrada ..	1,380	4,646	6,626	..
126	Mundia ..	1,736	206	1,934	..

Serial number.	Name of district.	Name of town area.	Population.			Members of town area committees.					Remarks.	
			Hindu.	Muslim.	Total.	Hindu.	Muslim.	Indian Christian.	Depressed classes.	Others.		Total.
188	Jaunpur ..	Kerakat ..	1,743	1,050	2,793	3	2	..	..	..	5	
189		Machhishahr ..	2,848	3,009	5,857	2	3	..	..	..	5	
190		Marahan ..	1,444	1,898	3,342	1	3	..	..	..	4	
191		Zafarabad ..	1,401	1,041	2,442	1	3	..	..	..	4	
192	Mirzapur ..	Ghurawal ..	866	144	1,010	3	..	..	..	..	3	
193		Kachwa ..	2,810	469	3,279	1	2	..	..	..	3	
194	Ghazipur ..	Bahadurganj Abdulpur	2,066	1,403	3,468	1	2	..	..	..	3	
195		Muhammahad Yusufpur.	3,637	2,660	6,297	3	2	..	..	..	5	
196		Saidpur ..	1,706	482	2,188	5	..	..	..	..	5	
197		Zamania ..	2,819	2,243	5,062	2	3	..	..	..	5	
198	Ballia ..	Buxedih ..	6,084	600	6,684	9	..	..	..	..	9	
199		Barageon ..	6,812	718	7,530	4	1	..	..	..	5	
200		Manjer ..	6,806	495	7,301	5	..	..	..	..	5	
201		Beoti ..	6,375	620	6,995	4	1	..	..	..	5	
202	..	Sahwar ..	6,032	635	6,667	5	..	..	..	..	5	
203		Sikandarpur ..	3,543	2,066	5,609	6	3	..	..	..	9	
204		Bairia ..	6,101	652	6,753	5	..	..	..	..	5	
205		Barhalganj ..	2,874	1,364	4,238	5	..	..	..	..	5	
206	Gorakhpur ..	Gola ..	2,986	538	3,524	4	1	..	..	..	5	
207		Lar ..	2,968	2,497	5,465	1	4	..	..	..	5	
208		Captainganj ..	2,275	782	3,057	3	..	..	..	..	3	
209		Padrauna ..	4,487	2,385	6,872	3	1	..	..	..	4	
210	..	Piprah ..	3,103	405	3,508	2	1	..	..	..	3	
211		Rampur ..	3,610	892	4,502	1	2	..	..	..	3	
212		Rudarpur ..	7,033	982	8,015	3	..	..	..	..	3	
213		Shawa Bazar ..	4,464	1,021	5,485	3	2	..	..	..	5	

214	Aranilla	1,833	495	1,328	2	1	..	..	..	3
215	Nisamabad	1,181	698	1,874	2	1	..	..	..	3
216	Dohrigat	1,765	805	2,070	2	1	..	..	..	3
217	Kopaganj	3,085	2,946	5,981	3	2	..	..	..	5
218	Mohnagar	1,914	755	2,670	1	1	..	1	..	3
219	Maharajganj	888	445	1,281	2	1	..	..	..	3
220	Muhammadsabad	2,623	8,380	6,853	2	3	..	..	..	6
221	Phulpura	613	2,207	3,207	1	3	..	..	..	6
222	Sarai Mir	1,594	1,198	2,352	3	2	..	..	..	5
223	Amila	2,164	2,352	4,500	4	1	..	..	..	5
224	Basti	4,302	248	4,550	4	1	..	..	..	5
225	Usha	13,393	4,228	17,554	4	1	..	..	..	5
226	Mehndawal	2,944	770	5,014	2	..	..	..	..	3
227	Naini Tal	5,914	2,822	8,336	2	1	..	..	..	3
228	Jaspur Union	3,418	8,251	6,664	3	2	..	..	..	5
229	Ranibagh-cum-Kath-godam	860	955	1,115	2	..	1	..	..	4
230	Snagar	2,050	64	2,114	3	..	..	..	..	3
231	Amethi	1,395	2,537	3,932	2	3	..	..	..	5
232	Kakori	1,594	2,912	4,506	1	4	..	..	..	5
233	Malhabad	2,816	4,659	7,475	3	2	..	..	..	5
234	Gosinaganj	1,817	419	2,236	3	..	..	..	..	3
235	Bangarman	2,578	2,341	4,919	3	2	..	..	..	5
236	Bhagwantnagar	2,483	176	2,659	3	..	..	..	..	3
237	Purva	4,768	2,390	7,158	3	2	..	..	..	5
238	Maurawan	4,520	1,701	6,221	4	1	..	..	..	5
239	Safpur	3,416	2,628	6,044	2	3	..	..	..	5
240	Dalman	4,513	766	5,269	2	3	..	..	..	5
241	Biswan	4,871	3,428	8,294	3	2	..	..	..	5
242	Loharpur	4,398	6,771	11,169	2	3	..	..	..	5
243	Misrik	2,666	666	3,122	5	..	..	..	..	5
244	Nimsar	2,708	80	2,788	3	..	..	..	..	3
245	Mallawan	7,075	2,515	9,590	5	..	..	..	..	5
246	Beniganj	1,680	442	2,092	2	1	..	..	..	5
247	Pali Khas	2,910	1,741	4,651	3	2	..	..	..	5

Serial number.	Name of district.	Name of town area.	Population.			Members of town area committees.						Remarks.
			Hindu.	Muslim.	Total.	Hindu.	Muslim.	Indian Christian.	Depressed classes.	Others.	Total.	
247	Kheri .. {	Gola Gokaran Nath ..	2,910	1,165	4,075	3	2	5	
248		Kheri ..	2,260	4,330	6,590	3	3	..	..	..	5
249	Fyzabad .. {	Akbarpur ..	8,143	2,642	5,785	3	2	5	
250		Bhadarsa ..	2,187	1,634	3,811	2	2	..	..	..	5
251		Goswanganj ..	1,109	719	1,818	4	1	..	..	..	5
252		Jalalpur ..	1,922	2,575	3,897	3	3	..	..	..	5
253		Nagpur ..	1,655	1,418	2,973	2	1	..	..	..	3
254	Gonda .. {	Katra ..	774	744	1,518	3	3	
255		Khargapur ..	1,311	460	1,771	3	1	..	..	..	3
256	Partabgarh .. {	Katra Medniganj ..	773	631	1,404	2	1	3	
257		Manikpur ..	2,479	1,617	4,096	..	3	..	..	..	3
258		Partabgarh ..	1,954	1,167	3,121	3	2	..	..	..	5
259	Bara Banki .. {	Bara Banki ..	2,064	1,778	3,842	2	3	5	
260		Darababad ..	2,470	2,883	4,853	3	3	..	..	..	5
261		Fatehpur ..	3,989	3,428	5,817	3	2	..	..	..	5
262		Ramnagar ..	2,743	963	3,695	5	..	..	..	..	5
263		Satrikh ..	1,691	1,469	3,850	2	..	..	..	..	5
264		Tikaitnagar ..	2,234	503	2,726	4	1	..	..	..	5
265		Zaidpur ..	2,234	627	7,495	1	4	..	..	..	5
266		Dewa ..	1,214	1,599	2,813	2	3	..	..	..	5

Statement showing the particulars concerning notified areas in these provinces called for in starred question No. 2 for June 25, 1926, asked by KHAN BAHADUR HAFIZ Hidayat Husain.

Serial number.	Name of district.	Name of notified area.	Population.			Members of notified area committees.					Remarks.
			Hindu.	Muslim.	Total.	Hindu.	Muslim.	Indian Christian.	Depressed classes.	Others.	Total.
1	Dehra Dun .. {	Rikhiyesh	3,103	293	3,396	4	1	..	..	..	4
2	.. {	Rajpore ..	2,964	496	3,460	2	..	1	..	..	4
3	Muzaffarnagar	Kandhla ..	4,344	5,310	9,654	43	3	..	..	..	6
4	Meerut .. {	Mawana ..	3,983	4,310	7,673	3	2	..	..	..	5
5		Sardhana	4,026	4,340	8,366	3	2	..	..	..	5
6	.. {	Pikhuva ..	5,434	1,134	6,568	4	..	..	..	1	5
7	Bulandshahr {	Anupshahr	4,844	1,685	6,529	2	1	..	..	..	3
8	.. {	Dibal ..	6,636	3,635	9,231	2	3	..	..	..	5
9	Muttra .. {	Kosi ..	3,615	2,485	6,300	5	1	..	..	..	6
10	.. {	Katapur Sikri	3,311	1,363	5,173	3	2	..	..	..	5
11	Agra .. {	Shikohabad	6,158	3,880	10,038	3	2	..	..	..	5
12	Mainpuri .. {	Mainpuri, Civil Station.	1,043	293	1,336	3	1	..	..	..	4
13	.. {	Meerha ..	3,152	4,417	7,569	1	4	..	..	..	5
14	.. {	Ganj Dundwara	3,291	3,637	6,918	3	2	..	..	..	5
15	Moradabad .. {	Hassanpur	4,265	5,491	9,757	..	..	..	..	..	5
16	Budaun .. {	Bili ..	4,312	1,900	5,913	2	..	..	..	..	2
17	Bareilly .. {	Anola ..	5,571	7,153	12,724	3	3	..	..	..	6
18	Farrukhabad .. {	Kaimganj	6,049	2,267	8,316	3	2	..	..	..	5
19	Etawah .. {	Auranga	4,922	907	5,829	4	1	..	..	..	5
20	.. {	Bindki ..	4,872	2,017	6,889	6	..	..	..	..	6
21	Fatehpur .. {	Mahoba ..	8,635	2,637	11,273	4	1	..	..	..	5
22	.. {	Kath ..	6,687	2,639	9,316	3	2	..	..	..	5
23	Banda .. {	Karwi ..	6,663	1,411	8,074	4	1	..	..	..	5
24	Benares .. {	Mughal Serai	1,790	568	2,378	5	2	1	..	..	8

* Includes one nominated member.

† This has become a notified area from 1-2-26. No committee has yet been made.
‡ Two elected two nominated.

§ Inclusive of three nominated members.

Serial number.	Name of district.	Name of notified area.	Population.			Members of notified area committees.						Remarks.
			Hindu.	Muslim.	Total.	Hindu.	Muslim.	Indian Christian.	Depressed classes.	Others.	Total.	
25	Mirzapur .. {	Chunar ..	5,120	1,664	6,784	4	1	5	Inclusive of one nominated member. Inclusive of two nominated members. Inclusive of one nominated member in each notified area.
26		Chunar settlement ..	..	..	..	3	..	..	..	2	5
27		Ahraura ..	8,258	1,165	9,423	3	1	..	..	..	4
28	Jaunpur .. {	Shahganj ..	3,291	1,788	5,079	3	2	..	..	..	5
29		Badshahpur ..	3,794	1,172	4,966	4	1	..	..	..	5
30		Basra ..	4,787	2,392	7,179	4	1	..	..	..	5
31	Gorakhpur .. {	Gorakhpur ..	6,497	836	7,333	3	1	..	..	2	6
32		Deoria ..	4,182	1,343	5,524	4	1	..	..	..	5
33		Gaura Barhaj ..	10,801	1,695	12,496	4	1	..	..	..	5
34	Azamgarh .. {	Mau ..	7,914	9,971	17,885	2	2	..	..	1	5
35		Mubarakpur ..	3,307	9,193	12,500	2	2	..	..	..	4
36		Haldwani ..	3,600	3,735	7,335	3	1	1	..	..	5
37	Naini Tal .. {	Ramesgar ..	2,686	1,506	4,192	3	..	..	..	..	3
38		Rhim Tal Sat Tal ..	1,438	189	1,627	4	1	..	..	1	6
39		Bhowali ..	934	123	1,047	2	1	..	..	1	4
40	Hardoi .. {	Sandi ..	4,064	2,445	6,509	2	3	..	..	..	5
41		Pihani ..	3,689	3,716	7,405	2	3	..	..	..	5
42		Madhoganj ..	2,487	606	3,093	5	..	..	..	..	5
43	Kheri .. {	Bilgram ..	5,089	3,999	9,088	3	2	..	..	..	5
44		Mohamdi ..	3,669	3,136	6,805	4	1	..	..	..	5
45		Nawabganj ..	3,792	1,513	5,305	3	1	..	..	..	4
46	Gonda .. {	Utraula ..	3,027	3,218	6,245	1	1	..	..	..	2
												*Excludes one ex officio member (tabaldar, Tarabganj). †Excludes one ex officio member (tabaldar, Utraula).

47	Gonda	Bargam Bazar	2,755	1,040	3,795	I	..	..	..	..	..	† Excludes four <i>ex officio</i> members —
												(1) Resident Engineer, and Bengal North-Western Railway, Gonda.
												(2) District Traffic Superintendent, Bengal and North-Western Railway, Gonda.
												(3) District Loco Superintendent, Bengal and North-Western Railway, Gonda.
												(4) Tahsildar, Bahampur estate.
48		Col (reigaun)-kum-Sakraura.	3,401	2,458	5,859	3	1	..	..	..	\$4	§ Excludes one <i>ex officio</i> member (sub-divisional officer, Tarabganj)
49	Bahraich ..	Nanpura	4,649	6,255	10,504	2	4	..	..	..	|| 6	|| Includes the president who is an <i>ex officio</i> member.
50		Bhinga ..	3,997	2,342	6,179	3	2	..	..	..	5	
51	Bura Banki ..	Rudauli	4,599	5,624	10,223	2	3	..	..	..	5	

A: P E N D I X C.

(See page 4 *supra*.)

Statement referred to in starred question No. 4 for June 25, 1926.

Serial number.	Name of post.	Pay in 1922-23.	Pay in 1923-24.	Reasons for increase.	Pay in 1924-25.	Reasons for increase.	Pay in 1925-26.	Reasons for increase.
	<i>Executive staff.</i>							
1	Secretary, District board.	Rs. 265	Rs. 300	A new Secretary was appointed and was given Rs. 200 per mensem during his probationary period. When confirmed he was allowed Rs. 300 per mensem, the total amount board used to spend on his predecessor, i.e., Rs. 265 pay and Rs. 45 pensionary contribution.	Rs. 300	No increase was given.	Rs. 300	
	<i>Office Establishment.</i>							
2	Head clerk	100	150	A very senior man: increase was given on personal merit and increase of work and responsibility.	150		150	
3	2nd do. ..	80	60	..	75		75	
4	3rd do. ..	Type allowance. 45	Type allowance. 45	..	55		55	
5	4th do. ..	45	45	..	50		50	
6	5th do. ..	40	40	Increase was given on personal merit.	50		50	
7	6th do. ..	40	40	..	Reduced.		Reduced.	
8	7th do. ..	35	35	..	35		35	
9	1st ahimed ..	45	45	..	45		45	
10	2nd do. ..	40	40	..	40		40	
11	3rd do. ..	30	30	..	30		30	
12	Apprentices	20	20	..	Reduced.		Reduced.	
13		505	555	..	530		580	

13	Civil Works Sub-over- seer.	90	90	Promotion due was not allowed in past years which was now allowed.	120	Increase and re-organization were due to heavy work owing to trans- fer of metalled roads.	120
14	Sub overseer	60	90	..	120		
15	Work agent	45	45	..	45		
16	Draftsman..	40	40	..	55		
17	Sub-overseer's munshi	..	..	..	5
18	Abimed ..	..	..	..	allowance for pe-shi work.
		235	265	..	345		945
19	Tube-well Inspector ..	30 and T A.	Reduced	..	44 including T. A.	Post again created.	44

No Increase or

REMARKS.—From the totals of each year it will appear that the extra expenditure incurred in giving promotions to the office clerks was Rs. 25 per mensem only which looking at the little amount it cost the board and great amount of satisfaction given to the employees seems to be quite reasonable.

APPENDIX D.

(See page 7 *supra*.)

Statement showing the number of non-Muslim and Muslim electors in the city municipalities in the United Provinces in the years 1923 and 1925 referred to in the answer to starred question No. 27 for the meeting of June 25, 1926.

Name of municipality.					Year.	Number of electors.	
						Non-Muslim.	Muslim.
1	Allahabad	...	...	...	1923	8,051	3,081
					1925	8,828	3,589
2	Cawnpore	...	...	...	1923	14,857	5,316
					1925	22,394	10,667
3	Benares	...	...	...	1923	10,115	1,268
					1925	15,011	5,277
4	Lucknow	...	...	...	1923	20,236	10,864
					1925	28,517	16,515
5	Agra	...	..	...	1923	9,009	2,895
					1925	10,023	2,933
6	Barcilly	...	...	...	1923	3,941	2,232
					1925	6,263	5,154
7	Meerut	...	...	...	1923	5,216	4,229
					1925	4,161	2,812
8	Fyzabad	...	..	...	1923	2,973	951
					1925	3,236	1,224
9	Mussoorie*	...		..	1923	547	167
10	Naini Tal*	...	...	...	1923	516	123

*The next elections in the municipalities will be held in September, 1926.

APPENDIX E.

(See page 17 *supra*).

Statement showing the increase of pay given by the Shahjahanpur District Board to its employees (Referred to in starred question No. 66 for June 25, 1926.)

(See Appendix C, page 82 *supra*.)

DISTRICT BOARD, BAREILLY.

(b) 1923-24	Secretary, District Board, Rs. 10 per mensem.	Annual promotion on incremental system.
	Chairman's reader, Rs. 20 per mensem.	The full pay of the post was given.
1924-25	Secretary, District Board, Rs. 10 per mensem.	Annual promotion on incremental system.
	Orderlies ... 1 8 0 Peons ... 1 8 0 Daftri ... 2 0 0	On ground of inadequate pay.
1925-26	Secretary, District Board, Rs. 10 per mensem.	Annual promotion on incremental system.
	Head clerk, Rs. 19 per mensem.	
	Accountant, Rs. 8 per mensem.	Because no promotion was given to these clerks since a long time and because the pay in this district was comparatively much smaller,
	Other clerks and ahlmads, Rs. 6 per mensem.	
	Assistant accountant, Rs. 3 per mensem.	
	Junior ahlmad, Rs. 4 per mensem.	

DETAILS OF DISTRICT BOARD STAFF AT BIJNOR.

Name of post.	Pay years before, i.e. in 1923.	Present pay.	Principles or reasons for increase.
	Rs.	Rs.	
Secretary Engineer ..	800	250 per mensem.	The late Secretary, who was drawing Rs. 800, died and the new Secretary is getting Rs. 250 at present hence the decrease.
Head clerk and Assistant Secretary combined.	100	155 per mensem.	Rs. 55 Responsibilities of the head clerk have been increased to give some relief to the Secretary.
Accountant	60	85 10 allowance.	Rs. 25 and Rs. 10. Increase is due to increased amount of work and responsibilities.
Educational clerk ..	60	70	Rs. 10. Increase due to increase of work
Assistant clerk ..	45	60	Rs. 15. Ditto.
Ditto ..	40	56	Rs. 16. Ditto.
Ditto ..	40	52	Rs. 12. Ditto.
Ditto ..	25	34	Rs. 9. Ditto.
Chairman's reader ..	..	30	A new post has been created from February 1, 1926, for Chairman's pashi
Educational ahlmad ..	45	60	Rs. 15. Increase due to increase of work.
District Board 2nd ahlmad.	40	56	Rs. 16. Ditto.
District Board Public Works 2nd ahlmad.	35	52	Rs. 17. Ditto.
District Board ahlmad in charge of Veterinary and Vernacular record room.	25	34	Rs. 9. Ditto.
District Board Educational 2nd ahlmad.	25	31	Rs. 6. Ditto.
Paid apprentice ..	15	20	Rs. 5. Ditto.
Provident fund clerk ..	..	25	Ditto.
Agricultural clerk ..	..	25	For the execution of agricultural programme sanctioned by the Agriculture department. This post has been newly created.

DISTRICT BOARD, BUDAUN.

Designation.	Last pay.	Increase given in last three years.			
	Rs.				
Head clerk	110	From Rs. 110 to Rs. 150 in three years from March 1, 1924.			
Accountant	70	Do	70	do.	100 ditto.
Public Works clerk	60	Do.	60	do.	75 ditto.
Record-keeper	50	Do.	50	do.	70 ditto.
Miscellaneous clerk	40	Do.	40	do.	50 ditto.
Assistant Accountant	35	Do.	35	do.	40 ditto.
Educational clerk	50	Do.	50	do.	65 ditto.
Municipal clerk	50	Do.	50	do.	60 ditto.
Educational clerk II	45	Do.	45	do.	50 ditto.
„ Ahmad I	35	Do.	35	do.	40 ditto.
„ „ II	30	Do.	30	do.	35 ditto.
„ „ III	25	Do	25	do	30 ditto.
Assistant Public Works clerk	25	Do.	25	do.	30 ditto.
Reader	45	Do	45	do	50 ditto.
Paid apprentice	20	Do.	20	do	25 ditto

NOTE.—The staff was dissatisfied with pay, which compared unfavourably with that allowed by other boards to their employees, and the board after considering claims of each member sanctioned the increments.

DISTRICT BOARD, MORADABAD.

Copy of letter No. 1292 of 1926, dated March 9, 1926, from the Chairman, District Board, Moradabad, to the Commissioner, Rohilkhand division, through the District Magistrate.

WITH reference to your endorsement No. 616/XXI—300, dated March 13, 1926, on the starred question No. 45 for March 1926, I have the honour to state that the pay of the Secretary, District Board, is incremental from Rs. 250—25—500. During the last three years, with effect from September 23, 1923, he was given an increment of Rs. 50 per mensem on the ground that his pay was too low as compared to his qualifications and heavy work done by him as was recognized by the board in a resolution. From September, 1924, he was given the second increment of Rs. 25 (Rs. 300 to Rs. 325) and again in September, 1925, he was given an increment of Rs. 25 rising from Rs. 325 to Rs. 350.

The two officials, Public Works ahlmad (M. Daulat Rai) and Educational moharrir (M. Ram Narain), were also given an increase of Rs. 5 per mensem each with effect from April 1, 1925, on the ground of their exceptionally good and hard work.

No increase was given to any other member of the headquarters staff during the last three years.

DISTRICT BOARD, PILIBHIT.

Copy of a letter No. 1028/XXI—30, dated March 25, 1926, from the Chairman, District Board, Pilibhit, to the District Magistrate, Pilibhit.

WITH reference to your endorsement No. 338/XXI—95, dated March 15, 1926, forwarding copy of starred question No. 45 for March 17, 1926, I have the honour to state that lump increase was not given to any of the officials of the headquarter staff of this board during the last three years except the Secretary, who got a lift of Rs. 50, with effect from April 1, 1924, and another lift of Rs. 50 with effect from April 1, 1925. The reason of increment was that the Secretary's pay as fixed in 1920 was neither incremental nor graded. Accordingly he got no increment for about four years notwithstanding a heavy increase in his work and responsibilities on account of inauguration of new District Board Act, 1922. It was considered on this ground to give an increment of Rs. 50. The second increment was given when his duties and responsibilities again considerably were increased in October, 1924, owing to the transfer of all the maintenance of original works of roads and buildings from Public Works department to District Board.

APPENDIX F.

(See page 19 *supra*.)*Statement showing the effects of retrenchment schemes during the past four years in the United Provinces.*

Name of department.	Class of officers.	Number removed.	Number given re-employment.	Number given reduced pensions.	Number not provided for.	Remarks.
Revenue	Gazetted officers .. Clerical establishment .. Menials ..	3 436 413	3 397 282	.. 18 .. 20 .. 49	.. 17 17 .. 6	
Police	Gazetted officers .. Clerical establishment .. Menials ..	.. 112 .. 44,749 .. ..	.. 57 .. .. .. ..	.. .. .. .. .. ..	.. .. .. .. .. ..
Appointment	Gazetted, clerical and menials ..	.. ..	.. ..	.. ..	.. ..
Excise	Gazetted officers ..	12	..	..	2	* These are town and village jamadars and chaudhars and there is no record to show how many have been given re-employment.
Judicial (Criminal)	Clerical establishment .. Menials ..	182 74	5 ..	..	26 74	† The post of Deputy Excise Commissioner has remained unfilled and one post of Assistant Excise Commissioner has been reduced.
Judicial (Civil)	Gazetted officers .. Clerical establishment .. Menials ..	.. 256 .. 97 .. 3	.. 199 .. 59 .. 4	.. 1 .. 17 .. 36	.. 53 12 ..	‡ Includes excise inspectors.
Forest	Gazetted officers .. Clerical establishment .. Menials ..	.. 28 .. 144 .. ..	.. 46 .. 1 .. 10	.. 36 .. 43 .. 34	.. 57 .. 14 .. 16	§ Includes subordinate executive staff. || Includes those who have resigned or who have been dismissed or discharged. ¶ One post has been reduced on account of the abolition of sheep-breeding experiments.
Industries	Gazetted officers .. Clerical establishment .. Menials ..	5 69 36	1 10 2	.. .. .. 43 .. ..	.. 14 .. 16 .. 34	
Total	Gazetted officers .. Clerical establishment .. Menials ..	13 933 45,503	4 612 389	1 128 58	6 118 194	

Notes.—(1) Officers who have retired on full pension or (except in the case of the menials of the Forest department) who have resigned or have been dismissed or discharged have not been shown.

(2) Information is not available regarding the re-employment, etc., of the discharged officers of the Government estates.

(3) The honourable member did not mention subordinate executive staff in questions Nos. 14 to 16. But in some cases such officers have been included.

APPENDIX G.

(See page 20 *supra*.)

Statement referred to in answer to unstarred question No. 24 (a) of June 25, 1926, asked by Pandit Nanak Chand.

A statement showing the number of objections filed and admitted for the correction of municipal electoral rolls at the last elections.

Name of municipality.	Number of objections filed.	Number of objections admitted.
Dehra Dun	2	1
Saharanpur	327	170
Deoband	197	66
Roorkee	445	344
Hardwar Union	17	7
Muzaffarnagar	500	271
Kairana	469	236
Meerut	5,601	2,263
Ghaziabad	1,047	551
Hapur	1,264	482
Baraut	911	761
Bulandshahr*	814	286
Khurja	594	438
Sikandrabad	1,057	242
Koili (Aligarh)	2,847	369
Hathras	2,206	1,051
Sikandra Rao	45	7
Atrauli	136	85
Muttra	748	420
Briundaban	88	26
Agra	1,971	452
Firozabad	762	150
Mainpuri	248	81
Etah	177	93
Soron	312	64
Kasganj	822	649
Jalesar	149	10
Bareilly	3,576	1,782
Najibabad	842	172
Chandpur	415	225
Nagina	525	79
Bijuor	1	1
Moradabad	30	16
Obandausi	667	523
Sambhal	487	284
Amroha	1,230	754
Shahjahanpur	1,037	508
Tilhar	332	89
Pilibhit	857	485

Name of municipality.	Number of objections filed.	Number of objections admitted.
Bisalpur ...	378	38
Budaun ...	1,142	223
Sahaswan ...	93	36
Ujhani ...	16	6
Almora ...	8	3
Kashipur...	5	3
Gorakhpur	410	189
Azamgarh	175	64
Fyzabad ...	1,637	694
Tanda ...	30	15
Gonda ...	438	328
Balrampur	343	169
Bahraich...	188	73
Sultanpur	178	45
Bela (Partabgarh)	6	5
Nawabganj (Bara Banki)	410	174
Jhansi ...	1,132	416
Mau ...	897	329
Lalitpur ...	23	22
Orai ...	8	8
Kunch ...	20	15
Kalpi ...	172	70
Banda ...	959	147
Lucknow...	2,322	1,547
Unao ...	76	40
Rae Bareli	189	99
Sitapur ...	34	21
Khairabad	13	8
Hardoi ...	4	2
Shahabad	203	115
Sandila ...	76	62
Lakhimpur	106	35
Etawah ...	8	4
Fatehpur...	368	191
Cawnpore	2,989	532
Allahabad	2,361	1,131
Fatehgarh-cum-Farrukhabad	1,709	722
Kanauj ...	519	169
Benares ...	3,886	2,781
Mirzapur	1,227	810
Jaunpur ...	723	323
Ghazipur...	926	781
Ballia ...	8	5

NOTE.—No elections have yet been held in Mussorie and Naini Tal municipalities, and the figures for Dhampur municipality have not been reported.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Monday, June 28, 1926.

THE Council met in the Council Chamber, Naiui Tal, at 11 a.m.,
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(99)

Hon'ble Sir Samuel O'Donnell.	Raja Narayan Pratap Singh.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.	Pandit Sri-Krishna Dutt Paliwal.
Hon'ble Rai Rajeshwar Bali.	Babu Parsidh Narayan Anad.
Hon'ble Thakur Bajendra Singh.	Pandit Yajna Narayan Upadhyay.
Hon'ble Nawab Muhammad Yusuf.	Pada Sri Krishna Dutt Dube.
Mr. G. B. Lambert.	Rai Sahib Babu Dip Narayan Roy.
Mr. E. A. H. Blunt.	Rai Bahadur Thakur Hanuman Singh
Kunwar Jagdish Prasad.	2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Sir Ivo Elliott, Bart.	Raja Indrajit Pratap Bahadur Sahi.
Mr. P. H. Tillard.	Bhaya Hanumat Prasad Singh.
Mr. H. A. Lane.	Pandit Govind Ballabh Pant.
Mr. R. L. Yorke.	Mr. Mukandi Lal.
Mr. R. Burn.	Babu Ram Chandra Sinha.
Mr. A. W. Pim.	Dr. Jaikaran Nath Misra.
Mr. B. J. K. Hallows.	Babu Sita Ram.
Mr. E. L. Norton.	Kunwar Krishna Pratap Singh
Mr. H. G. Billson.	Babu Bindeshwari Prasad.
Mr. R. J. S. Dodd.	Kunwar Surendra Pratap Sahi.
Colonel A. W. R. Cochrane.	Mr. Muhammad Aslam Sa'id.
Mr. A. H. Mackenzie.	Maulvi Zabur-ud-din.
Mr. M. F. P. Herchenroder.	Maulvi Shahab ud-din.
Raja Muhammad E'jaz Rasul Khan.	Nawabzada Muhammad E'jaz Ali Khan.
Raja Bahadur Brij Narayan Rai.	Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. H. O. Desanges.	Mr. Muhammad Ismail Ali Khan.
Mr. H. David.	Maulvi Muhammad Obaid-ur-Rahman Khan.
Lala Kishan Lal.	Khan Bahadur Hafiz Hidayat Hussain.
Babu Narayan Prasad Arora.	Khan Bahadur Shaikh Musud-uz-Zaman.
Babu Sangam Lal.	Khan Bahadur Mr. Muhammad Ismail.
Babu Mohan Lal Saksena.	Maulvi Abdul Hakim.
Babu Damodar Das.	Dr. Shafiat Ahmad Khan.
Babu Jai Narayan Chaudhri.	Saiyid Muhammad Ashiq Hussain.
Babu Bhagwati Sahai Bedar.	Khan Bahadur Maulvi Fasih-ud-din.
Thakur Manjit Singh Rathor.	Khan Bahadur Maulvi Muhammad Fasil-ur-Rahman Khan.
Chaudhri Jaswant Singh	Khan Bahadur Hakim Mahbub Ali Khan.
Rai Sahib Chaudhri Sheoraj Singh.	Khan Bahadur Munsbi Siddiq Ahmad.
Pandit Nanak Chand.	Qazi Sahib Ashraf.
Lala Babu Lal.	Raja Saiyid Ahmad Ali Khan Alvi.
Thakur Rajkumar Singh.	Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Thakur Shiva Narayan Singh.	Shaikh Abdus Samad Ansari.
Rai Bahadur Babu Ram Nath Bhargava.	Mr. St. George H. S. Jackson.
Rai Amba Prasad Sahib.	Lala Behari Lal.
Rai Bahadur Pandit Kharagjit Misra.	Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Suryapal Singh.	Lieut. Raja Shaikh Imtias Rasul Khan.
Lala Dhakan Lal.	Raja Jagannath Bakhsh Singh.
Babu Nemi Saran.	Mr. E. M. Souter.
Chaudhri Badan Singh.	Mr. Tracey Gavin Jones.
Rao Sahib Kunwar Sardar Singh.	Rai Bahadur Babu Vikramajit Singh.
Thakur Sadho Singh.	Dr. Ganesh Prasad.
Pandit Brijnandan Prasad Misra.	
Thakur Har Prasad Singh.	
Lieut. Raja Durga Narayan Singh.	

QUESTIONS AND ANSWERS.

*Listed for June 26, 1926.***STARRED QUESTIONS.****JAIL ADMINISTRATION, BUDAUN.**

*1. **Babu Jai Narayan Chaudhri** : Will the Government be pleased to state if Chaudhri Badan Singh, M.L.C., noted certain irregularities in the Budaun jail administration and mentioned them in his inspection note in the early part of the year 1924 ?

*2. Is it a fact that soon after the district magistrate, Budaun, also visited the jail and in his inspection note made certain insulting remarks against the said M. L. C. regarding his inspection note ? Will the Government be pleased to state what these remarks were ?

*3. Is it true that in the course of his next visit Chaudhri Badan Singh came across the note of the district magistrate and he appended a note taking strong exception to the remarks of the magistrate ?

*4. Is it a fact that that note of Chaudhri Badan Singh has been removed from the inspection book ? If so, why and under what authority ?

*5. Has that note been destroyed or is it still in the custody of the authorities concerned ?

*6. Will the Government be pleased to state if the district magistrate was in order in making such remarks against the said M. L. C. ? If not, do the Government propose to take any and what steps making the repetition of such remarks impossible at Budaun and elsewhere ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : In February, 1924 Chaudhri Badan Singh visited the Budaun jail and in the inspection book made the following allegations :—

- (1) that prisoners were being given an insufficient supply of vegetables in contravention of the Jail Manual, and that the quality was inferior ;
- (2) that there was a profuse supply of vegetables available, which was being put to an improper use ;
- (3) that lemons were available every year in the jail garden, but none were supplied to the prisoners.

Inquiry has shown that there is no ground whatever for these allegations, that vegetables of good quality were being supplied to the full amount prescribed in the Jail Manual, that vegetables were not being put to any use other than that allowed by the rules, and that lemons were given to prisoners whenever available. The district magistrate in a subsequent inspection note took exception to these unwarranted charges against the jail officials, and in doing so expressed himself forcibly. He has been told that Government do not approve of the terms of his comment and consider that his language should have been more restrained. Chaudhri Badan Singh in a later note in the inspection

book retorted in a manner likely to be subversive of jail discipline; his note was accordingly removed from the inspection book, but it has been preserved.

Pandit Brijnandan Prasad Misra: Who made these inquiries as regards these allegations?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: The inquiries were made by the jail authorities.

Pandit Brijnandan Prasad Misra: Was any evidence of witnesses recorded in that inquiry?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: I am not sure of the details.

Rai Bahadur Babu Vikramajit Singh: Was Chaudhri Badan Singh present at the inquiry?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: Neither was it necessary nor was he there.

Pandit Nanak Ohand: Was the inquiry made by the Superintendent of the District Jail or by any higher official of the Jail department?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: As I have said before, I am not sure of the details.

Rai Bahadur Babu Vikramajit Singh: Will the Government be pleased to put a copy of the result of inquiry on the table?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: We have already given the substance of it.

Rai Bahadur Babu Vikramajit Singh: In what capacity did the district magistrate make these remarks?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: As a district magistrate.

Rai Bahadur Babu Vikramajit Singh: Can one visitor make remarks against another visitor?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: The district magistrate has a special position.

Rai Bahadur Lala Mathura Prasad Mehrotra: Has the note of the district magistrate been removed from the inspection book?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: No.

Rai Bahadur Lala Mathura Prasad Mehrotra: Why not?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: Because it will not affect the jail discipline in any way.

Pandit Nanak Ohand: Is it a fact that the Jail Commission recommended that the non-official visitors will have the same status as other visitors?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: As far as the jail inspection is concerned there is no difference. They are given the same facilities.

Pandit Nanak Ohand: Are they entitled to criticize each other's remarks, or is that function reserved for a higher jail official?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: I think a responsible officer is authorized to clear his position if the allegations of a visitor are incorrect.

Khan Bahadur Maulvi Fasih-ud-din : What criticisms were made by the district magistrate ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : That the allegations were not true. I do not remember the exact wording.

Pandit Nanak Chand : Did the district magistrate make inquiries from the prisoners about the supply of vegetables ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : I am not aware of this.

CASE OF KUDRAT ULLAH VERSUS NANAK CHAND.

*7. **Dr. Shafa'at Ahmad Khan :** Will the Government be pleased to state if they have read the judgement delivered by the Hon'ble the High Court of Judicature at Allahabad recently in the case of *Kudrat Ullah versus Nanak Chand* of Amroha, in which reference is made to a gang of persons who ply the nefarious trade of traducing respectable people ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes.

*8. **Dr. Shafa'at Ahmad Khan :** Will the Government be pleased to place a copy of that judgement on the table ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : As the matter is at present the subject of proceedings in a criminal court Government see no object in doing so.

*9. **Dr. Shafa'at Ahmad Khan :** Will the Government be pleased to make an exhaustive inquiry into the activities and objects of the *baeesees*, and place a copy of their report on the table of the House ?

*10. Will the Government be pleased to furnish this Council with a list of the names of persons who are members of the *baeesees* ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : As long as the matter is *sub judice* in a criminal court Government are unable to institute any inquiry.

SALE OF WOMEN.

*11. **Dr. Shafa'at Ahmad Khan :** Will the Government be pleased to state what action, if any, they have taken with regard to the traffic in women which is carried on by people inhabiting the districts contiguous to the Punjab ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The honourable member is referred to the answer to his (starred) question No. 111 of December 18, 1924. Action of the kind indicated therein still continues.

Starred question No. 111 and the answer given to it on December 18, 1924, referred to in answer to starred question No. 11 for June 26, 1926.

Dr. Shafa'at Ahmad Khan : (1) Will the Government be pleased to depute a special police officer to inquire into the sale and purchase of women that goes on in some parts of these provinces and the Punjab ?

(2) Will the Government be pleased to organize an active campaign against this traffic in co-operation with the Punjab Government ?

Hon'ble Raja Sir Muhammad Ali Muhammad Khan : (1) The whole question was thoroughly investigated in 1914 by an officer of the Criminal Investigation department and the Criminal Investigation department continue to keep in touch with the traffic. Government therefore see no necessity for a further special inquiry of the nature suggested.

(2) The traffic as commonly practised is nothing more than a form of matrimonial agency, and as such it is not necessarily illegal, though it may lend itself to abuses. A general campaign against it would not therefore be possible even if it were desirable. The police already have instructions to take immediate action on any complaint of kidnapping or abduction made by a party aggrieved, and surveillance is exercised over matrimonial agents of suspicious character. Government are not of opinion that anything more is required.

UNANI AND VEDIC HOSPITALS.

*12. **Saiyid Muhammad Ashiq Husain :** Will the Government be pleased to lay on the table a statement showing the names of the municipal and district boards which have opened Unani and Vedic hospitals, the number of such institutions within each municipality or district board, the recurring and non-recurring expenditure on each institution and the number of patients treated every month by each during the last six months?

Hon'ble Rai Rajeshwar Bali : Inquiries have been made, but the complete information is not yet available.

QAZI FOR KASHIPUR, NAINI TAL.

*13. **Dr. Shafa'at Ahmad Khan :** Is it a fact that the Government appointed a qazi for Kashipur in the Naini Tal district recently?

Did the Government consult the Muslim public at the time of selection?

Is it a fact that the qazi so appointed was convicted in 1906 of an offence under section 110?

Will the Government make inquiries?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : (1) A qazi was appointed for Kashipur in January last.

(2) Yes. It was upon an application presented by the Muhammadan public of Kashipur, which was investigated by the sub-divisional officer, that the appointment was made.

(3) It now appears that the qazi so nominated was twenty years ago bound over under section 110, Criminal Procedure Code. This fact was not brought to notice till a month after his appointment had been recommended to Government.

Pandit Brijnandan Prasad Misra : Who had recommended the appointment of the qazi?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : He was appointed on the application of the Muslims of Kashipur.

Pandit Brijnandan Prasad Misra : Was the application recommended by some of the officials of the place?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : I am not sure, it might have been.

Khan Bahadur Hafiz Hidayat Hussain : Has the question of his appointment been revised?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : If we find that during these twenty years he has not mended his ways, and there is some complaint we will consider the question of revising.

REPRESENTATION OF SHIAS ON LOCAL BOARDS.

* 14. **Babu Narayan Prasad Arora :** (a) Is the Government aware that there is a great feeling of dissatisfaction among the Shias of these provinces for not getting adequate representation on the local boards?

(b) Is the Government considering their case?

Hon'ble Nawab Muhammad Yusuf : No.

* 15. **Babu Narayan Prasad Arora :** (a) Is the Government aware that the Shias of Cawnpore want representation on municipal and district boards?

(b) How and when is the Government going to meet their demand?

Hon'ble Nawab Muhammad Yusuf : (a) The Shia League of Cawnpore has submitted a representation on the subject.

(b) The Government are not prepared to take any action to amend the Act.

* 16. **Babu Narayan Prasad Arora :** Is the Government aware that since 1916 no Shia has been able to succeed in the municipal elections in Cawnpore?

Hon'ble Nawab Muhammad Yusuf : A Shia gentleman was selected in 1919.

* 17. **Babu Narayan Prasad Arora :** Is it a fact that prior to 1916 Shia candidates succeeded in municipal elections?

Hon'ble Nawab Muhammad Yusuf : Government have no information.

* 18. **Babu Narayan Prasad Arora :** (a) Is it a fact that the Shias of Cawnpore have made a representation to the Government about the joint electorate?

(b) Is the Government aware that the Shias of Cawnpore prefer joint electorate?

Hon'ble Nawab Muhammad Yusuf : (a) The representation from the Shia League contained this suggestion.

(b) No.

ELECTION OF CHAIRMAN, DISTRICT BOARD, JHANSI, AND THE CONDUCT OF DISTRICT AUTHORITIES.

* 19. **Pandit Jhanni Lal Pande :** With reference to the answers to starred questions Nos. 108 and 110 of February 24, 1926, will the Government be pleased to state if any conference was held in the MacDonnell High School, Jhansi, in the year 1925?

Hon'ble Nawab Muhammad Yusuf : No.

*20. **Pandit Jhanni Lal Pande** : Did Mr. Williamson attend it or deliver any speech there ?

Hon'ble Nawab Muhammad Yusuf : No.

*21. **Pandit Jhanni Lal Pande** : In what manner has the Government satisfied itself as to the correctness of the answer given to starred question No. 112 of the said date ?

Hon'ble Nawab Muhammad Yusuf : The Government gave the answer on the basis of the information received from the district officer.

*22. **Pandit Jhanni Lal Pande** : With reference to the answer to starred questions Nos. 114 to 116 of the said date, will the Government be pleased to state if the order of the returning officer mentioned the fact that objection was made to the returning officer under rule 25 of the Election rules ? If not, how did the district magistrate know that such objection was raised ?

Hon'ble Nawab Muhammad Yusuf : The answer to the first part of the question is in the negative. The district magistrate was informed of the objections in the petition presented to him by the Raja Bahadur of Katehra.

*23. **Pandit Jhanni Lal Pande** : With reference to starred question No. 131 of the said date, will the Government be pleased to state if the joint magistrate of Lalitpur wrote to the secretary, district board, Jhansi, inquiring from him the date of the election of chairman and the names and addresses of the members of the board residing in his subdivision ?

Hon'ble Nawab Muhammad Yusuf : Yes.

*24. **Pandit Jhanni Lal Pande** : With reference to the answer to starred question No. 133 of the said date, will the Government be pleased to state the reasons why the Hon'ble Minister interfered with the discretion of the district magistrate, Jhansi, by prohibiting him from attending and addressing the board's meeting ?

Hon'ble Nawab Muhammad Yusuf : The reason was that the presence of the district magistrate at the meeting might be misconstrued.

*25. **Pandit Jhanni Lal Pande** : With reference to the answer to starred question No. 148 of the said date, will the Government be pleased to state on whose recommendation did the collector nominate Ratan Dhobi ?

Hon'ble Nawab Muhammad Yusuf : On the recommendation chiefly of the Raja of Katehra.

*26. **Pandit Jhanni Lal Pande** : How did the Government know that Ratan Dhobi is a well educated man ? From whom did the Government receive this report ? Did the Government attempt to get a similar report or information about the education of Babu Lal Khatik ? Has this Babu Lal applied to the Government for his nomination ?

Hon'ble Nawab Muhammad Yusuf : The Government were informed by the district magistrate that Ratan Dhobi is well educated for his class. The answer to the third part of the question is in the negative, and to the last part in the affirmative.

*27. **Pandit Jhanni Lal Pande**: Is it a fact that the head clerk, the secretary and other clerks have often to go to Katehra and Moth to get papers disposed of by the chairman and vice-chairman?

Hon'ble Nawab Muhammad Yusuf: No, the head clerk went to Katehra three times in three months.

*28. **Pandit Jhanni Lal Pande**: Will the Government be pleased to state how many times did they do so in the months of December, January and February last? Was the travelling allowance paid by the chairman and vice-chairman from their own pocket or by the board? If by the board, how much?

Hon'ble Nawab Muhammad Yusuf: The head clerk went to Katehra three times and his travelling allowance amounting to Rs. 50 11-7 was paid by the board.

*29. **Pandit Jhanni Lal Pande**: Is it a fact that Pandit Thakur Prasad, a member of the district board, who has been authorized to check the accounts, has objected to such journeys and allowances?

Hon'ble Nawab Muhammad Yusuf: Yes.

*30. **Pandit Jhanni Lal Pande**: (a) Has the Jhansi district board constituted a sub-divisional committee of Lalitpur, combining the two tahsil committees of Lalitpur and Mahroni?

(b) Has it obtained the sanction of the local Government as required by the District Boards Act?

(c) How many miles away from Lalitpur does the chairman of the sub-divisional committee reside?

(d) Is it a fact that he is also an honorary magistrate?

(e) How many days in a week does he attend the court work and the sub-divisional committee work at Lalitpur?

Hon'ble Nawab Muhammad Yusuf: (a) Yes.

(b) Yes.

(c) Nineteen miles.

(d) Yes.

(e) The number of days on which he attends is not fixed, but depends on the amount of work.

*31. **Pandit Jhanni Lal Pande**: Has the Jhansi district board decided to dispense with the services of the compounders of Ayurvedic dispensaries? If so, will the Government be pleased to give the number of existing Ayurvedic dispensaries and the number of dispensaries the compounders of which have been dispensed with?

Hon'ble Nawab Muhammad Yusuf: There are six Ayurvedic dispensaries and compounders have been dispensed with in three of them.

*32. **Pandit Jhanni Lal Pande**: Is it a fact that the pay of the teachers, pound-keepers, vaccinators, compounders and v aids under the district board, Jhansi, for the month of December, 1925 and January, 1926 was despatched after February 15 1926? If so, why?

Hon'ble Nawab Muhammad Yusuf: Yes, for lack of funds.

***33. Pandit Jhanni Lal Pande :** Is it a fact that neither the chairman nor the vice-chairman was at Jhansi to sign the cheques of pay and the dues of contractors in the month of February ?

Hon'ble Nawab Muhammad Yusuf : No.

***34. Pandit Jhanni Lal Pande :** On what dates were these cheques and their bills signed by the chairman, and on which dates were the payments entered in the cash book and classified abstract ?

Hon'ble Nawab Muhammad Yusuf : The information will be obtained if the bills and cheques are specified.

***35. Pandit Jhanni Lal Pande :** What is the normal monthly expenditure of the Jhansi district board ? What amount was spent in the month of February, 1926 ?

Hon'ble Nawab Muhammad Yusuf : The average monthly expenditure during the year 1925-26 was about Rs. 36,500. The amount spent in February, 1926 was Rs. 48,450.

***36. Pandit Jhanni Lal Pande :** Is it a fact that the chairman advanced Rs. 400 to Rai Sahib Pandit Nanhu Prasad, member of Moth, for constructing causeway of Ramnagar ? If so, on which date ? Who sanctioned the estimate and the contract ? Was the estimate ever laid before the board ? On which date did the said Rai Sahib commence the work ? Has the work been completed ? If so, when ? Has any certificate from the engineer or the overseer been taken as to the satisfactoriness of the work ?

Hon'ble Nawab Muhammad Yusuf : A sum of Rs. 400 was advanced to Rai Sahib Pandit Nanhu Prasad for constructing a causeway at Ramnagar and another at Khariaghat on December 19, 1925. The estimate was sanctioned by the outgoing board. The work was commenced on December 8, 1925, and completed on January 2, 1926. The engineer has inspected the work and found it to be satisfactory.

***37. Pandit Jhanni Lal Pande :** Has the chairman passed any orders that no repairs or white-washing will be done to schools and pounds after the rainy season ?

Hon'ble Nawab Muhammad Yusuf : No.

***38. Pandit Jhanni Lal Pande :** Is it a fact that the services of peons of arboriculture supervisors and the engineer have been dispensed with ? If so, when ?

Hon'ble Nawab Muhammad Yusuf : The services of the peons of the arboriculture supervisors and of the two peons of the engineer were dispensed with on March 1, 1926.

***39. Pandit Jhanni Lal Pande :** Will the Government be pleased to state whether the former board had sanctioned a contract for the construction of additional rooms in the hostel of Mau town school and training class ?

Hon'ble Nawab Muhammad Yusuf : Yes.

***40. Pandit Jhanni Lal Pande :** Is it a fact that the contractor had collected the materials and commenced the work ?

Hon'ble Nawab Muhammad Yusuf : The contractor collected a portion of the materials, but did not commence the work.

*41. **Pandit Jhanni Lal Pande :** (a) Is it a fact that the chairman or vice-chairman has stopped the work and cancelled the contract? If so, under what authority?

(b) Was the sanction of the board taken for this action?

(c) What was the total amount of the contract given by the old board?

(d) What is the number of the present boarders in the town schools and accommodation available in the present hostel?

Hon'ble Nawab Muhammad Yusuf : (a) The vice-chairman acting as chairman stopped the work because no agreement was executed and there was no provision in the budget.

(b) No.

(c) A sum of Rs. 4,859 was sanctioned by the outgoing board, but no contract was executed.

(d) There are 50 boarders, but accommodation is available for 30.

TOWN AREA, GARIA PHATAK, JHANSI.

*42. **Pandit Bhagwat Narayan Bhargava :** With reference to the answers to starred questions Nos. 195 and 196 of February 24, 1926, will the Government be pleased to state—

(a) if the Government have received a representation of the Agent, Great Indian Peninsula Railway, through the Government of India regarding the transfer of Garia Phatak town area to the railway control;

(b) if the Government have consulted the wishes of the residents of the town area about this change of administration;

(c) whether the Government have received by registered post a petition signed by a large number of the residents of the town area that they want to be controlled and administered by the Jhansi municipal board and not the railway notified area? What action was taken on it?

Hon'ble Nawab Muhammad Yusuf : (a) Yes.

(b) Yes.

(c) Yes. The petition was returned for submission through the proper channel.

*43. **Pandit Bhagwat Narayan Bhargava :** Is it a fact that the town magistrate of Garia Phatak has already taken the opinion of the *panches* on the matter?

Hon'ble Nawab Muhammad Yusuf : Yes.

*44. **Pandit Bhagwat Narayan Bhargava :** Is it a fact that the majority of the *panches* have expressed themselves in favour of being transferred under municipal board control?

Hon'ble Nawab Muhammad Yusuf : The majority have voted for transfer to the railway, provided that larger representation is given to the town area than was originally proposed.

(NOTE.—There have been two meetings. At the first meeting two members voted for the municipality and one for the railway. At the second three voted for the railway and one for the municipality.)

*45. **Pandit Bhagwat Narayan Bhargava** : What is the population and yearly income of the said town area ?

Hon'ble Nawab Muhammad Yusuf : Population 8,429. Income Rs. 8,050.

*46. **Pandit Bhagwat Narayan Bhargava** : Is the Government aware that Sipri Bazar is included in the municipal area of Jhansi ?

Hon'ble Nawab Muhammad Yusuf : Yes.

*47. **Pandit Bhagwat Narayan Bhargava** : Is it a fact that most of the residents of Sipri Bazar are railway servants ?

Hon'ble Nawab Muhammad Yusuf : Many are railway employees.

*48. **Pandit Bhagwat Narayan Bhargava** : What is the distance between the verge of municipal area and the borders of the said town area ?

Hon'ble Nawab Muhammad Yusuf : The railway area included in the municipal area adjoins the town area.

*49. **Pandit Bhagwat Narayan Bhargava** : In how many cities in the United Provinces are railway lines administered by the municipal boards and in how many by the railways themselves ?

Hon'ble Nawab Muhammad Yusuf : In no case is there a separate railway administration constituted as a municipal body; but in several cases the railway actually carries out almost all services for the railway property.

*50. **Pandit Bhagwat Narayan Bhargava** : Will the Government be pleased to state the constitution of the notified area for Garia Phatak as proposed by the Agent, Great Indian Peninsula Railway ?

Hon'ble Nawab Muhammad Yusuf : The divisional transport superintendent (chairman).

The district surgeon.

The divisional engineer.

The district mechanical engineer.

The loco foreman.

The station master.

The sub-divisional magistrate (now town magistrate).

Three nominated representatives of the notified area.

*51. **Pandit Bhagwat Narayan Bhargava** : Has the Agent admitted in his representation that the area is very insanitary and full of epidemics and infectious diseases ?

Hon'ble Nawab Muhammad Yusuf : Yes.

*52. **Pandit Bhagwat Narayan Bhargava** : Is the Government aware that the assistant director of public health in his report No. 394/70, dated August 21, 1923, explained the necessity of including this town area into the municipal area from a sanitary point of view ?

Hon'ble Nawab Muhammad Yusuf : Yes.

*53. **Pandit Bhagwat Narayan Bhargava** : Will the Government be pleased to state the number of voters on the new electoral roll of Garia Phatak town area ?

Hon'ble Nawab Muhammad Yusuf : 2,926.

TOWN AREA CHIRGAON, JHANSI.

*54. **Pandit Bhagwat Narayan Bhargava** : Will the Government be pleased to state the population, the number of electors and the annual income of Chirgaon town area in Jhansi district ?

*51. **Hon'ble Nawab Muhammad Yusuf** : Population . . 3,594

Electors 512

Income Rs. 19,430

*55. **Pandit Bhagwat Narayan Bhargava** : Is it a fact that in 1924 when the then Minister for Local Self-Government visited Chirgaon, he expressed his opinion to the *panches* that Chirgaon could be constituted into a municipality ?

Hon'ble Nawab Muhammad Yusuf : The honourable minister expressed no official opinion.

*56. **Pandit Bhagwat Narayan Bhargava** : Has the Government since then considered the advisability of establishing a municipality there ? If not, does it intend to do so now ? Has it any objection to consulting the town area committee ?

*58. **Hon'ble Nawab Muhammad Yusuf** : The question of converting Chirgaon into a notified area is being considered.

DISTRICT BOARD, JALAUN.

*57. **Pandit Jhanni Lal Pande** : Is it a fact that the last meeting of the district board of Jalaun was declared to be confidential and no visitors were allowed ?

Hon'ble Nawab Muhammad Yusuf : Yes.

*58 **Pandit Jhanni Lal Pande** : Will the Government be pleased to state the reasons, if any, that led the chairman to declare any ordinary meeting of the board as " confidential ? "

Hon'ble Nawab Muhammad Yusuf : The chairman apprehended disorder and exercised his discretion under section 51 of the Act.

*59. **Pandit Jhanni Lal Pande** : (a) Is a fact that Babu Reoti Prasad, overseer, was dismissed by the outgoing district board of Jalaun ?

(b) On which date was the resolution passed ?

Hon'ble Nawab Muhammad Yusuf : (a) Yes.

(b) On October 5, 1925.

*60. **Pandit Jhanni Lal Pande** : (a) Is it also a fact that the same gentleman has been re-appointed by the new board ?

(b) Is it a fact that this second resolution has been adopted within six months of the passing of the last resolution of dismissing him ?

(c) If so, will the Government be pleased to state if the provisions of section 55 of the District Boards Act entitling a board to rescind its former resolution within six months were fulfilled ?

(d) If the answer to (c) is in the negative, will the Government be pleased to state what action the commissioner took when the proceedings came to him for approval ?

Hon'ble Nawab Muhammad Yusuf : (a) Yes.

(b) Yes.

(c) The intention of section 55 was fulfilled as the substance of the original resolution was set forth and every member was fully aware of the nature of the proceedings.

(d) Does not arise.

POLLING STATION OF GURSARAI, JHANSI.

*61. **Pandit Bhagwat Narayan Bhargava :** Is the Government aware that Gursarai is a polling station for the Legislative Council and district board elections in the Jhansi district ?

Hon'ble Nawab Muhammad Yusuf : Gursarai is a polling station for the Legislative Council but not the district board elections.

*62. **Pandit Bhagwat Narayan Bhargava :** Is it a fact that the said polling station has got the largest number of electors in the electoral rolls in the whole district with the exception of Jhansi itself ?

Hon'ble Nawab Muhammad Yusuf : No.

*63. **Pandit Bhagwat Narayan Bhargava :** Is it a fact that polling was invariably held there in the Council and district board elections in 1920 and 1923 ?

Hon'ble Nawab Muhammad Yusuf : No.

*64. **Pandit Bhagwat Narayan Bhargava :** (a) Is the Government aware that in the last district board elections, the polling for Gursarai constituency was held at Garotha ?

(b) If the answer to the above be in the affirmative, will the Government be pleased to state by whom was the polling station changed, for what reasons and under what authority ?

Hon'ble Nawab Muhammad Yusuf : (a) Yes.

(b) The district magistrate under rule 4 of the district board election rules changed the polling station to Garotha, the headquarters of the taluk where there is a sub-treasury. Both of the two tahsil officers had been appointed polling officers. One of them was bound to open the sub-treasury. The move of the polling station made this possible.

(Listed for June 28, 1926.)

STARRED QUESTIONS.

POLLING STATION OF GURSARAI, JHANSI.

*1. **Pandit Bhagwat Narayan Bhargava :** Will the Government state how many days before the election was this change in the polling station (from Gursarai in the Jhansi district to Garotha) announced to the constituency concerned and in what manner ?

Hon'ble Nawab Muhammad Yusuf : The change was announced in the manner prescribed in the rules one and a half months before the election.

*2. **Pandit Bhagwat Narayan Bhargava :** Does the Government prove the procedure adopted in changing the ordinary polling station ?

Hon'ble Nawab Muhammad Yusuf : Yes.

*3. **Pandit Bhagwat Narayan Bhargava** : How many villages did the Government include in Gursarai constituency ?

Hon'ble Nawab Muhammad Yusuf : All the villages of the provincial polling station of Gursarai with the exception of 26 villages.

*4. **Pandit Bhagwat Narayan Bhargava** : Were the villages notified in the *Government Gazette* ? If so, when ?

Hon'ble Nawab Muhammad Yusuf : Yes, under Government notification No. 506, dated May 27, 1925.

*5. **Pandit Bhagwat Narayan Bhargava** : (a) Is it a fact that the villages notified by the Government were not actually included in the electoral roll of Gursarai prepared at Jhansi ?

(b) If the answer to the above be in the affirmative, will the Government be pleased to state how many villages were left out and how many voters were included in these villages ?

Hon'ble Nawab Muhammad Yusuf : (a) No.

(b) Does not arise.

DISTRICT BOARD ELECTION, JHANSI.

*6. **Pandit Bhagwat Narayan Bhargava** : (a) Is it a fact that the returning officer of Moth tahsil in Jhansi district did not himself fill up the nomination rolls of some candidates for district board election held last year but asked them to fill them up themselves.

(b) If the answer be in the affirmative, does the Government approve of this procedure ?

Hon'ble Nawab Muhammad Yusuf : (a) Yes.

(b) No.

*7. **Pandit Bhagwat Narayan Bhargava** : Will the Government kindly state on which date the ballot box of district board election was received from Barwasagar polling station in Jhansi district in collector's office ?

Hon'ble Nawab Muhammad Yusuf : On December 3, 1925.

*8. **Pandit Bhagwat Narayan Bhargava** : Will the Government be pleased to give the distance of Barwasagar from Jhansi and to state if there is a railway connexion between these two places ?

Hon'ble Nawab Muhammad Yusuf : Twelve miles. There is railway connexion.

*9. **Pandit Bhagwat Narayan Bhargava** : Will the Government kindly state if it has nominated any official as a member of any municipal board ? If so, to which boards in the provinces and why ?

Hon'ble Nawab Muhammad Yusuf : An official member was nominated by Government to each of the municipal boards of Jalesar and Unao and by the commissioners before the withdrawal of power of nomination from them to each of the municipal boards of Deoband, Kunch, Kalpi, Orai, Mirzapur, Jaunpur, Etahia and Tanda. The appointment of an official was desirable owing to the special circumstances of these small municipalities.

*10. **Pandit Bhagwat Narayan Bhargava** : Will the Government inform the Council for how many municipal boards they have nominated members of the depressed classes and for how many they have not ?

Hon'ble Nawab Muhammad Yusuf : Members of depressed classes have been nominated on 24 boards. Members who do not belong to depressed classes but take special interest in them have been nominated on nineteen boards. In the case of 28 boards no member of the depressed classes has been nominated. The nomination of representatives of the depressed classes in some other places is still under consideration.

***11. Pandit Bhagwat Narayan Bhargava :** Will the Government be pleased to give the names of the municipal boards which have got no nominated members of the depressed classes and the reasons for not nominating one to each of them.

Hon'ble Nawab Muhammad Yusuf : The names of the boards to which no member of depressed classes has been nominated are Hardwar, Mussoorie, Naini Tal, Sikandrabad, Jalesar, Moradabad, Unao, Hardoi, Sandila, Kanauj, Balrampur, Gonda, Budaun, Bulandshahr, Bara Banki, Saharanpur, Deoband, Kairana, Hapur, Ghaziabad, Kunch, Kalpi, Orai, Benares, Mirzapur, Jaunpur, Ballia and Tanda. The names of the municipal boards to which persons who take interest in the depressed classes have been nominated are Roorkee, Baraut, Khurja, Hathras, Kasganj, Bijnor, Sabaswan, Chandausi, Tilhar, Cawnpore, Fatehpur, Banda, Ghazipur, Gorakhpur, Azamgarh, Almora, Lucknow, Bahraich and Fyzabad. The reason for not nominating a member of depressed classes is that suitable persons were not available in certain places while in some others the nominations were made before the date of the Council resolution about the appointment of members of depressed classes.

DISTRICT BOARD ELECTION, PILIBHIT.

***12. Pandit Brijnandan Prasad Misra :** (a) Will the Government inform the Council how many cases of wrong identification were brought to light before the district judge in evidence in the course of the hearing of the district board election petition of Babu Devi Das Agrawal in Pilibhit?

(b) What identifying agency worked at the district board elections in Pilibhit this year?

(c) Did the district magistrate of Pilibhit impose mukhias and chaukidars for identifying, withholding the patwaris from this work this year?

(d) How many of the members belonging to rural areas and returned at the district board polls this year are mukhias of villages?

(e) Does the Government know that this gave the police a direct influence over the elections?

Hon'ble Nawab Muhammad Yusuf : (a) Six.

(b) Candidates' agents, lambardars, mukhias and chaukidars.

(c) The district magistrate's instruction was that, as far as possible, the services of patwaris should be dispensed with and identification should be made by the lambardar, mukhia, chaukidar or any other individual on whom the presiding or polling officer can sufficiently rely.

(d) Five.

(e) The suggestion is unfounded.

Pandit Brijnandan Prasad Misra : Were the chaukidars considered to be more reliable than the patwaris.

Hon'ble Nawab Muhammad Yusuf : That is a matter of opinion.

Pandit Brijnandan Prasad Misra : Which of the two officers draw the higher salary ?

Hon'ble the President : That is a matter of public knowledge not exclusively confined to the Government.

IMPROVEMENT OF ROADS, MORADABAD.

*13. **Dr. Shafa'at Ahmad Khan :** (1) Will the Government be pleased to state if the chairman, district board, Moradabad, asked the District Magistrate, Moradabad, to request the Government to sanction a special grant for the improvement of roads in the Moradabad district ?

(2) Is it a fact that the district magistrate supported the proposal and stressed the need for a special grant for the repair of roads in the Moradabad district ?

Hon'ble Nawab Muhammad Yusuf : In 1921 and again in 1923 the Moradabad board asked for a grant for these roads through the district magistrate who supported the request.

*14. **Dr. Shafa'at Ahmad Khan :** (1) Have the Government received any representation from the chairman, Moradabad district board, regarding the need for a special grant for the repair of roads in the Moradabad district ?

(2) Will the Government be pleased to state if they contemplate sanctioning the grant ?

Hon'ble Nawab Muhammad Yusuf : (1) The honourable member is referred to the answer just given.

(2), No.

*15. **Dr. Shafa'at Ahmad Khan :** (1) Is the Government aware that nearly all the roads in Moradabad are sadly in need of repair ?

(2) Has the attention of the Government been drawn to the state of the Sambhal-Moradabad road ?

(3) Is the Government aware that it is difficult and dangerous to use this road ?

Hon'ble Nawab Muhammad Yusuf : (1) The Government are aware that the roads are in poor condition.

(2) Yes, in 1921.

*16. **Dr. Shafa'at Ahmad Khan :** (1) Will the Government be pleased to state if they have received requests from other district boards also for the improvement of roads maintained by the district boards ?

(2) If so, will the Government be pleased to lay on the table a statement giving the names of such district boards and specifying the object and the amount needed by each ?

Hon'ble Nawab Muhammad Yusuf : (1) Yes.

(2) The requests were made at various times and in various ways, and an attempt to trace each of these requests would consume more time and labour than the result would be worth.

QAZIS APPOINTED UNDER THE QAZIS ACT.

*17. **Dr. Shafa'at Ahmad Khan** : Will the Government be pleased to give in the tabulated form below the following information :—

- (1) names of qazis and their naibs appointed under the Qazis Act of 1880 for each district ;
- (2) date of their appointment in the district ;
- (3) by whom were they appointed ;
- (4) the fees charged by each qazi for the performance of *nikah* ;
- (5) the control, if any, exercised by the collector or any other officer of the Government over such qazis ;
- (6) does each qazi possess a register for entry of marriages ? If so, is the register ever inspected by any Government officer or any other body ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : A statement† giving the information asked for is supplied to the honourable member.

REVENUE AHLMADS.

*18. **Pandit Nanak Chand** : (a) Is it a fact that revenue ahlmads of the courts of sub-divisional officers of Khurja and Sikandrabad in Bulandshahr district employ private agency to cope with the pressure of their official work ?

(b) If so, will the Government be pleased to sanction paid additional hands in the case of the other two sub-divisions ?

Hon'ble Sir Sam. O'Donnell : (a) Yes.

(b) Temporary assistance has been sanctioned by Government.

WITHDRAWAL OF MAGISTERIAL POWERS OF SAIYID MOIN-UD-DIN OF BAREILLY.

*19. **Pandit Nanak Chand** : (a) Is it a fact that Saiyid Moin-ud-din, Special Magistrate, 1st class, Bareilly, has recently been a prominent figure in some criminal cases to which one Mizaj Ahmad, head master of a municipal school, one of the special magistrate's neighbours, was a party ?

(b) Is it a fact that Saiyid Moin-ud-din approached the joint magistrate of Bareilly in whose court a case under section 110, Criminal Procedure Code, against the said Mizaj Ahmad was either on the point of being instituted or had already been instituted and spoke against Mizaj Ahmad ?

(c) Is it a fact that on this ground the case had to be transferred to the court of Mr. Alvi ?

(d) Is it a fact that Saiyid Moin-ud-din gave evidence before Mr. Alvi as witness for the Crown and his evidence was discarded by the trying magistrate ?

(e) Will the Government be pleased to send for from the district magistrate, Bareilly, a detailed report of the part played by Saiyid Moin-ud-din in relation to the various criminal cases against Mizaj Ahmad and consider the desirability of withdrawing his magisterial powers either permanently or as a temporary measure ?

† Not printed.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: (a) He was a witness.

(b) He complained to the joint magistrate before any case was instituted.

(c) The High Court ordered the transfer of the case on the ground that transfer was expedient for the ends of justice.

(d) Yes.

(e) Government have received a detailed report and are satisfied that there are no grounds for withdrawing the magisterial powers of Saiyid Moin-ud-din.

TOWN HALL, BULANDSHAHR.

*20. **Pandit Nanak Ohand:** (a) Is it a fact that Bulandshahr town hall was built by Raja Baqar Ali Khan of Pindrawal in 1882 for the purpose of holding public meetings in the district?

(b) Is it a fact that the town hall has been maintained, repaired and controlled by the municipal board, Bulandshahr, since 1882 up to March 1925 when the control of the town hall was taken over by the district magistrate and placed in the charge of the tahsildar, Bulandshahr? If so, under what authority?

(c) Is the Government aware that this arrangement has very much curtailed the utility of the town hall for the purpose of holding public meetings except those held at the instance of or with the approval of the officials?

(d) Who is responsible for incurring the maintenance, repair and supervision charges since the control of the town hall has been transferred? From what source is the chaukidar paid?

(e) Do the Government intend to re-transfer the control of the town hall to the municipal board, Bulandshahr, or to a joint non-official committee of municipal and district boards, Bulandshahr? If so, when?

Hon'ble Nawab Muhammad Yusuf: (a) The town hall was built out of public subscriptions for the general needs of the district, in particular for the purpose of holding useful public meetings.

(b) The town hall was maintained as stated. Its control was taken over on August 15, 1925, by the district magistrate under his executive authority.

(c) No.

(d) and (e) The Government have resumed the property known as Moti Bagh, including the town hall, from the municipal board and have made over the management to the collector. The control of the town hall for the purpose of meetings has been vested in a committee consisting of the collector as president and the chairmen of the municipal and district boards, Bulandshahr.

Pandit Nanak Ohand: Is it incorrect to say that the town hall was built by Raja Baqar Ali Khan of Pindrawal?

Hon'ble Nawab Muhammad Yusuf: I have already said that it was built out of public subscriptions.

Pandit Nanak Ohand: On what ground was this new arrangement for control and maintenance made?

Hon'ble Nawab Muhammad Yusuf: For the general needs of the district.

Pandit Nanak Chand: From what funds is it now proposed to maintain it?

Hon'ble Nawab Muhammad Yusuf: Out of the Collector's contingency funds.

Pandit Nanak Chand: Is the Government prepared to consider the desirability of de-officializing the control of the town hall and to appoint a committee consisting of the members of the district board and municipal board.

Hon'ble Nawab Muhammad Yusuf: We are trying this experiment; if this proves to be a success, Government are not going to take any action; if it proves faulty, they will consider the suggestion.

Pandit Nanak Chand: Are there any other precedents where the Collector has some control over the management of town hall in other districts?

Hon'ble the President: The question does not arise. That will require notice.

CIRCUMSTANCES AND PROPERTY TAXES.

* 21. **Pandit Nanak Chand:** Will the Government be pleased to give the list of district boards which have submitted proposals for the introduction of a tax on circumstances and property, with the date of the proposals received by the Government and the Government's decision thereon in each case?

Hon'ble Nawab Muhammad Yusuf: The information is given below :—

Name of district board.	Date of the proposal.	Government's decision.
Lucknow	May 29, 1924	} Sanctioned.
Moradabad	March 18, 1925	
Cawnpore	August 25, 1925	
Meerut	August 6, 1925	
Allahabad	November 18, 1925	
Shahjahanpur	December 19, 1925	
Bulandshahr	February 1, 1926	
Fyzabad	March 20, 1926	
Hardoi	February 11, 1925	The board was asked to re-submit the proposal in accordance with the prescribed procedure. The proposal was incomplete and the board has been asked to re-submit it.
Mirzapur	March 2, 1926	

DISCHARGE OF SULLAGE DRAINS.

* 22. **Pandit Nanak Chand:** (a) Will the Government be pleased to state the number of sullage drains discharged into the Ganges at (1) Rishikesh, (2) Hardwar, (3) Cawnpore, and (4) Benares?

(b) What steps, if any, has Government taken or does it propose to take to stop the discharge of the sullage drains into the Ganges with respect to all or any of the towns named above?

(c) Will the Government be pleased to give the names of other towns where sullage drains are discharged into the Ganges in the United Provinces and also of towns where they are discharged into the Jumna?

Hon'ble Rai Rajeshwar Bali : (a) The number of sullage drains is given below :—

(1) Rishikesh ..	..	..	..	..	..	1
(2) Hardwar ..	..	..	..	..	..	10
(3) Cawnpore ..	..	..	..	..	..	42
(4) Benares ..	..	..	..	..	..	16

(b) The matter is in each case primarily for the municipality concerned.

(c) Other towns where sullage drains are discharged into the Ganges are Anupshahr, Mirzapur and Ghazipur. The sullage in Allahabad is allowed to flow into the Jumna when the demand for it at the sullage farm is slack or when the sump well at the pumping station is cleaned.

Pandit Nanak Chand : Is it not a fact that these places are visited by a large number of pilgrims from outside the municipal area?

Hon'ble the President : That is an argument. Everybody knows that.

Pandit Nanak Chand : Then, in view of these places being centres of pilgrimage, will the Government consider the advisability of making some suitable arrangement for preventing these sullage drains dropping into the Ganges at those places?

Hon'ble Rai Rajeshwar Bali : Schemes are being prepared for Benares by the Board of Public Health, and if any applications are received through the Board of Public Health, Government will be quite prepared to consider them.

HONORARY OFFICE-HOLDERS.

* 23. **Pandit Nanak Chand :** Will the Government be pleased to state if they have fixed any maximum age limit for retiring honorary magistrates, assistant collectors and munsifs?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : No definite age-limit is fixed; when honorary office-holders become physically or otherwise unfit no further work is sent to them.

Pandit Nanak Chand : Will the Government consider the advisability of considering the question of their fitness and also of their being conversant with the use of at least one vernacular at the time of their renewal in the case of those people who are unfit on account of these defects?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Certainly, if there is any case where there is a man who is not fit for our standard.

Pandit Nanak Chand : Will the Government issue instructions to the district magistrates to bring it to their notice at the time of renewal?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : I believe instructions have already been issued.

Mr. Muhammad Aslam Saifi : Is it a fact that the Government has issued a circular to the effect that honorary magistrates should retire at the age of sixty ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : I do not know.

Mr Muhammad Aslam Saifi : Is it considered a sufficient qualification if the honorary magistrate is able to write his name ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : If the honourable member will read the reply he will see that this is not a sufficient qualification.

Mr. Muhammad Aslam Saifi : Is the Hon'ble the Home Member aware that there are honorary magistrates who cannot do anything more than write their names ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : I am not aware of that.

Pandit Nanak Chand : Will the Government make inquiries about such honorary magistrates ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : If any specific instances are brought to our notice we will be prepared to make inquiries.

Khan Bahadur Maulvi Fazl-ur-Rahman Khan : Is the Government aware that in some districts there are honorary magistrates who have been suffering for a very long time with a headache ? They do not write their judgements nor their depositions. They only sign them.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : I am not aware of that.

Khan Bahadur Maulvi Fazl-ur-Rahman Khan : Will the Government make inquiries ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : If specific instances are given.

Khan Bahadur Maulvi Fazl-ur-Rahman Khan : Yes, in the Bareilly division. I don't mean the district, but in the division.

(No reply.)

*24. **Pandit Nanak Chand :** Will the Government be pleased to state if they require any, and, if so, what, minimum standard of education or literacy for the appointment of honorary magistrates, assistant collectors and munsifs ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The standard required is that they should be able to read and write one of the vernaculars, if not English, and should be sufficiently well educated to be able to conduct their court proceedings with intelligence and to understand the law which they have to administer.

*25. **Pandit Nanak Chand :** Will the Government be pleased to state if they are prepared to examine the possibility of instituting a qualifying examination for the posts of honorary magistrates, assistant collectors and munsifs ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : No.

COCAINE SMUGGLING.

*26. **Pandit Nanak Chand :** Is it a fact that the offences of cocaine smuggling for eating purposes are increasing ? Do the Government

intend to make the evil effects of cocaine eating on health more widely known to young men and residents of urban areas by issuing suitable pamphlets in English, Urdu and Hindu ?

Hon'ble Thakur Rajendra Singh : Government regret to say that such information as they have does suggest that cocaine smuggling is increasing. They doubt, however, whether propaganda of the type suggested by the honourable member might not actually have the effect of increasing the use of cocaine. A description of the evil effects of a pleasure-giving drug to persons who are unacquainted with it might induce in weak-minded people a curiosity to test the drug for themselves ; and unfortunately the use of the drug on a single occasion is likely to induce a craving for it. The use of cocaine is becoming a serious problem, and Government will shortly consider it in all its aspects with the assistance of the Provincial Excise Board.

BILAHRA COURT OF WARDS.

*27. **Pandit Brijnandan Prasad Misra :** Will the Government be pleased to inform the Council who is the special manager of the Court of Wards under whose charge Bilhara estate has been placed ?

Whose building does the aforesaid manager occupy for his residence in the district of Bara Banki and what rent does he pay therefor ?

Hon'ble Sir Sam. O'Donnell : Khan Bahadur Syed Muhammad Mustafa is the special manager of Bilahra. He occupies an estate house free of rent.

*28. **Pandit Brijnandan Prasad Misra :** Is any expenditure incurred by the the Court of Wards for the Bilahra estate on the upkeep of cattle and vegetable gardens ? If so, how much for each item and what profit do these items return ?

Hon'ble Sir Sam. O'Donnell : No vegetable garden is kept up at the cost of the Bilahra estate. Rupees 1,500 are spent annually on the upkeep of bullocks for the watering of estate groves of mangoes, lemons, etc., while the annual average profits from sale of fruit comes to about Rs 4,200.

*29. **Pandit Brijnandan Prasad Misra :** What amount of money is annually subscribed in the name of this estate to Shia College, Jaunpur and since when ?

Are any amounts being paid on behalf of this estate to any persons for *majlis* ? If so, how much, and whether these persons do actually come for *majlis* every year ?

Is any of these persons such as used to come during the lifetime of the Raja ?

Hon'ble Sir Sam. O'Donnell : (a) Rupees 300 has been paid annually during the last five years.

(b) and (c) Maulvis, hadis khwāns and marsia khwāns, etc., who come to join the *Muharram*, *Ohehlum*, *Ramzan* and other religious functions of the Bilahra estate are paid according to their merits. The total sum paid amounts to Rs. 2,700. Only those persons are paid who actually attend the *majlises*. Most of them are people who used to come during the time of the late Raja.

***30. Pandit Brijnandan Prasad Misra :** What is the amount of money spent on entertaining guests of the Bilahra estate each year by the Court of Wards? Did any guests actually visit the place last year? If so, what are their names?

Hon'ble Sir Sam. O'Donnell : Hundreds of guests come to Bilahra on the occasions of *Muharram*, *Chehlum*, *Ramzan* and other functions of the estate and they are entertained according to the custom of the estate. The total expenditure on the entertainment of these guests was Rs. 3,700 last year. A complete list of names cannot be given.

***31. Pandit Brijnandan Prasad Misra :** How many of the servants of this estate under Court of Wards are (1) Shias, (2) Sunnis, and (3) Hindus?

Who appointed (1) Munshi Iqbal Husain, mukhtar, (2) Munshi Najmal Husain, amin, (3) Munshi Abu Muhammad, abalmad, and (4) Fateh Husain, ziladar of the Nurpur, and why?

Is No. (2), of these a former dismissed servant of the estate and No. (3) a private tutor of the sons of the special manager?

Is Kazim being paid for by the Court of Wards as a cook for Bilahra estate, and, if so, whose food does he cook and where was he previously employed?

Hon'ble Sir Sam. O'Donnell : (a) Shias 15, Sunnis 12, Hindus 6.

(b) Munshi Iqbal Husain and Munshi Abu Muhammad were appointed by the Deputy Commissioner and Munshi Fateh Husain by the special manager because they were believed to be suitable and competent. No person named Najm-ul-Hasan is employed by the estate or known to the local authorities.

(c) The first part of this question has been replied to. Munshi Abu Muhammad has never been employed as private tutor of the son of the special manager.

(d) Kazim has been a chaprasi of the Court of Wards for the last six years and has never been paid as a cook. There is no record of his previous employment.

MIAN SYED JAWAD ALI SHAH OF GORAKHPUR AND HIS ESTATE.

***32. Khan Bahadur Shaikh Masud-us-Zaman :** Will the Government be pleased to state how the *waqf* and private property of Mian Syed Jawad Ali Shah, minor, of Gorakhpur, is administered?

What is the estimated annual income of the landed property owned by Mian Syed Jawad Ali Shah, minor, of Gorakhpur?

Is it a fact or not that while the said property is nominally under the supervision of the District Judge, who is the guardian of the minor, practically it is under the management of a private manager paid from the revenues of the estate?

***33. For how many years has Maulvi Muhammad Sadiq been acting as special manager of the said estate? What monthly pay is he drawing from the estate? What are his qualifications for the post of special manager? What responsible appointment did he hold before he was appointed to his present post? In what ways is the special manager responsible to the District Judge for the administration of the said property?**

*34. When will the minor, Mian Syed Jawad Ali Shah, come legally of age ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: The monthly pay of the manager is Rs. 400. For the information sought in the remainder of question No. 33 and in questions Nos. 32 and 34 the honourable member is referred to the reply to starred question No. 57 put by him on April 8, 1926.

Copy of starred question No. 57 asked by KHAN BAHADUR SHAIKH MASUD-UZ-ZAMAN at the Council meeting of April 8, 1926, and the answer given thereto.

QUESTION.

(a) What is the estimated annual income of the landed property owned by Mian Syed Jawad Ali Shah (minor) of Gorakhpur? How is the said property administered?

(b) For how many years has Maulvi Muhammad Sadiq been acting as special manager of the said estate? What are his qualifications for the post of special manager? What responsible appointment did he hold before he was appointed to his present post? In what ways is the special manager responsible to the District Judge for the administration of the said property?

(c) When will the minor Syed Jawad Ali Shah come legally of age?

ANSWER.

(a) The estimated annual gross income of the landed property is about Rs. 1,05,000. The estate is administered by a guardian appointed under the Guardian and Wards Act, VIII of 1890.

(b) Maulvi Muhammad Sadiq has been guardian and manager for about five years. He was formerly superintendent of the Collectorate office, Gorakhpur, and afterwards was secretary of the municipal board, Gorakhpur, for about ten years. A guardian submits a budget every year to the District Judge and also monthly and annual accounts; special matters in connexion with administration of the estate are submitted to the Judge for his approval.

(c) The minor Syed Jawad Ali Shah will attain his majority on January 18, 1928.

COURT OF WARDS ESTATES.

*35. **Pandit Nanak Chand:** Will the Government be pleased to lay a statement on the table giving the following information:—

- (1) names of estates under the Court of Wards;
- (2) date when the Court of Wards assumed charge in each case;
- (3) number, sex, age and the stage of education reached in the case of minor wards of each estate, together with the name of educational institutions attended;
- (4) name, educational qualifications and salaries given to tutors or tutoresses or governesses, if any, in each case.

Hon'ble Sir Sam. O'Donnell: (1) and (2) The honourable member referred to column 3 of Statement I published with the annual report of the Court of Wards for the year ending September 30, 1924.

(3) and (4) A copy of the desired statement† is placed on the honourable member's table.

SUB-REGISTRARS AND THEIR ASSOCIATION.

*36. **Khan Bahadur Hafiz Hidayat Husain:** Has the Government recognized the United Provinces Sub-Registrars' Association?

Hon'ble Nawab Muhammad Yusuf: Yes.

***37. Khan Bahadur Hafiz Hidayat Husain :** Has the Government received a copy of the resolutions passed at the annual gatherings of the association for the last two years ?

Hon'ble Nawab Muhammad Yusuf : Government have received a copy of the resolutions passed in September, 1925.

***38. Khan Bahadur Hafiz Hidayat Husain :** Is the Government aware that there is discontent among the sub-registrars for (1) want of time-scale in their cadre, (2) disallowance of house rents to sub-registrars of big cities like Benares, Cawnpore, Agra, etc. ? What action does the Government propose to take to redress these complaints ?

Hon'ble Nawab Muhammad Yusuf : These two points have been the subject of a resolution by the sub-registrars' association.

(1) Is under consideration.

(2) Government are not prepared to give house rent allowances.

***39. Khan Bahadur Hafiz Hidayat Husain :** Is there any bar to muharrirs of registration offices being appointed sub-registrars ? If not, how many have been so appointed permanently during the last two years ?

Hon'ble Nawab Muhammad Yusuf : (1) Yes.

(2) Does not arise.

***40. Khan Bahadur Hafiz Hidayat Husain :** Are sub-registrars of higher grades included in the list of durbars ?

Has any sub-registrar received any title from the Government so far ?

Is the Government aware that the sub-registrars make this their complaint ?

How does the Government propose to meet these complaints ?

Hon'ble Sir Sam. O'Donnell : 1. Yes.

2. One sub-registrar received a title before his appointment as sub-registrar.

3 and 4. Titles are not conferred by or on the recommendation of the Governor in Council.

***41. Khan Bahadur Hafiz Hidayat Husain :** Is there any bar to muharrirs of registration offices being taken to clerical posts of the judicial or executive line ? Are they so taken ? If so, how many have been so taken during the last two years ?

Hon'ble Nawab Muhammad Yusuf : (a) Muharrirs may be entered on the graded list of officials of the civil courts.

(b) Information is being collected as to the number of muharrirs taken in the judicial line.

TICKET-CHECKERS OF SHAHDARA-SAHARANPUR LIGHT RAILWAY.

***42. Chaudhri Jaswant Singh :** Is it a fact that the ticket-checkers of Shadara-Saharanpur Light Railway charge the fare privately without receipt from the passengers who travel without tickets ?

Is it also a fact that they charge more from the passengers than the actual fare?

Will the Government be pleased to make an inquiry from the Shahdara-Saharanpur Light Railway authorities regarding the above affair?

Hon'ble Sir Sam. O'Donnell : The local Government have made inquiry and have ascertained—

(a) no specific charges of the nature referred to have yet been brought to notice ;

(b) a charge in excess of the actual fare is levied in accordance with the Indian Railways Coaching Tariff.

***43. Chaudhri Jaswant Singh** : Is it a fact that the Shahdara-Saharanpur Light Railway authorities previously received complaints against these ticket-checkers?

Has any action been taken on those complaints? If not, why?

Will the Government be pleased to state the number of Hindu and Muhammadan ticket-checkers respectively of the Shahdara-Saharanpur Light Railway?

Hon'ble Sir Sam. O'Donnell : (a) The only complaints received have been in the nature of claims in respect of the amounts realized and each complaint has been duly inquired into and necessary action taken in each case.

(b) There are four ticket-checkers—two Brahmans, one Rajput and one Muhammadan.

SEATS IN SECOND CLASS CARRIAGES OF THE SHAHDARA-SAHARANPUR LIGHT RAILWAY.

***44. Chaudhri Jaswant Singh** : Is the Government aware that the seats in second class carriages in the Shahdara-Saharanpur Light Railway are low and weak and very uncomfortable to passengers?

Hon'ble Sir Sam. O'Donnell : The seats are 1½" lower, but otherwise do not differ greatly from the old ones.

LANDHAURA COURT OF WARDS.

***45. Chaudhri Jaswant Singh** : Will the Government be pleased to state why the Court of Wards has not paid the salaries of the personal servants and cattle expenses of the ward of the Landhaura estate (in Saharanpur district) for the last ten months?

Hon'ble Sir Sam. O'Donnell : Delay has occurred because the ward for a long time declined to accept money sent to him for this expenditure or to give receipts. Orders have recently been issued by the board which it is hoped will ensure prompter payment of the servants.

BABU BENI PRASAD AND SECRETARYSHIP OF THE MUTTRA MUNICIPALITY.

***46. Babu Jai Narayan Chaudhri** : Will the Government be pleased to lay on the table the correspondence between the chairman, municipal board, Muttra, and the Commissioner of Agra, about Babu Beni Prasad?

Hon'ble Nawab Muhammad Yusuf : No.

NOMINATIONS TO MUNICIPAL AND DISTRICT BOARDS.

***47. Khan Bahadur Hafiz Hidayat Hussain:** How many persons who offered themselves for election to the municipal and district boards during the last elections and were defeated at the polls have been nominated by the Government?

What are their names? Were they recommended for nomination by the Commissioners of the divisions? If not, how were they brought to the notice of the Government?

What are their special qualifications for nomination?

Hon'ble Nawab Muhammad Yusuf: So far as information is available, the following members have been nominated who were defeated at the polls:—

- (1) Allahabad municipality ... Mrs. Uma Nehru.
- (2) Almora municipality ... M. Pari Tamta.
- (3) Bahraich municipality ... Khan Bahadur Saiyid Aulad Husain.
- (4) Muttra district board ... Rai Bahadur Babu Ram Nath.
- (5) Allahabad district board ... B. Venkatesh Tiwari.
- (6) Hardoi district board ... Rai Bahadur Thakur Mashal Singh.
- (7) Bara Banki district board... Thakur Raghu Nath Singh.

Of these Nos. (2), (3) and (4) were recommended by the Commissioners.

All were well-known public workers whose services would be useful to the boards.

ELECTION OF CHAIRMEN OF MUNICIPAL AND DISTRICT BOARDS,
MORADABAD, AND THE DISTRICT MAGISTRATE.

***48. Babu Bhagwati Sahai Bedar:** Is it a fact that on December 18, 1925, the district magistrate, Moradabad, sent for some of the elected members of the municipal board at his bungalow and asked them to vote for a certain member who stood as a candidate for the chairmanship of the municipal board of Moradabad?

Hon'ble Nawab Muhammad Yusuf: No.

***49. Babu Bhagwati Sahai Bedar:** Is it a fact that the district magistrate of Moradabad called a number of *raises* or influential persons and pressed them to exert their influence on the members of their ward to vote for a certain member who was a candidate for the chairmanship of the municipal board, Moradabad?

Hon'ble Nawab Muhammad Yusuf: No.

***50. Babu Bhagwati Sahai Bedar:** Is it a fact that on December 21 the district magistrate of Moradabad called some of the members of the district board at his bungalow and indirectly compelled them to vote for a certain member of the district board whom he wanted to be elected as the chairman of the district board, Moradabad?

Hon'ble Nawab Muhammad Yusuf: No.

***51. Babu Bhagwati Sahai Bedar:** If the answers to previous questions be in the affirmative, will the Government be pleased to state

whether they approve of the conduct of the district magistrate in the matter of election of the local boards ?

Hon'ble Nawab Muhammad Yusuf : Does not arise.

MUSLIM WAQFS AND THEIR ACCOUNTS.

*52. **Dr. Shafa'at Ahmad Khan :** With reference to the replies to my starred questions Nos. 113 to 116, dated December 22, 1925, will the Government be pleased to inquire why no accounts have been filed by *mutawallis* under section 3 of the Musalman Waqf Act, 1923, in the following districts :—

- (1) Lucknow, (2) Bijnor, (3) Moradabad, (4) Sultanpur, and (5) Kheri ?

*53. Will the Government be pleased to make inquiry into the circumstances which led to the Musalman Waqf Act being ignored in these districts ?

*54. Is the Government aware that in all these districts there exists a large amount of *waqf* property ?

Hon'ble Rai Rajeshwar Bali : The statements required under section 3 of the Act have been furnished in Lucknow, Bijnor and Moradabad. In Kheri there has been delay due to the ignorance of *mutawallis*. The Government understand that there are no *waqfs* in Sultanpur.

*55. **Dr. Shafa'at Ahmad Khan :** Will the Government be pleased to supply to the members of the Council detailed information regarding the accounts filed under section 3 of the Musalman Waqf Act in the following districts :—

- (1) Garhwal, (2) Almora, (8) Naini Tal, (4) Dehra Dun, (5) Muttra, (6) Etawah, (7) Mainpuri, (8) Cawnpore, (9) Jalaun, (10) Jhansi, (11) Hamirpur, (12) Banda, (13) Farrukhabad, (14) Benares, (15) Mirzapur, (16) Bara Banki, (17) Hardoi, (18) Unao, (19) Lakhimpur, (20) Partabgarh, (21) Fyzabad, (22) Kheri, (23) Sultanpur, (24) Moradabad, (25) Bijnor and (26) Lucknow ?

*56. Will the Government be pleased to supply the information asked for in the previous question in the tabulated form as below :—

- (1) name of *mutawalli* ;
- (2) area ;
- (3) annual income ;
- (4) value of the property ;
- (5) date of the foundation of the *waqf* ;
- (6) the name of the founder ;
- (7) object of the *waqf* ;
- (8) the remuneration of the *mutawalli* ;

Hon'ble Rai Rajeshwar Bali : The information† which has been obtained is laid on the honourable member's table.

*57. **Dr. Shafa'at Ahmad Khan :** With reference to the answer of the Government to starred questions Nos. 113 to 116, dated December

22, 1925, will the Government be pleased to give a correct, detailed and clear statement of *wagfs* in the following districts:—

- (1) Azamgarh ;
- (2) Ghazipur ;
- (3) Gorakhpur ;
- (4) Ballia ;
- (5) Gonda ;
- (6) Babraich ;
- (7) Rae Bareli ;
- (8) Saharanpur ;
- (9) Jaunpur ;
- (10) Bulandshahr ;
- (11) Sitapur ;
- (12) Allahabad ;
- (13) Bareilly ;
- (14) Agra ;
- (15) Shahjahanpur ;
- (16) Budaun (the amount of income and value of property should be mentioned in the list for Budaun) ;
- (17) Fatehpur ;
- (18) Etah ;
- (19) Aligarh ?

The information regarding the *wagf* property in above districts should be given in the tabulated form below :—

- (1) name of the *mutawalli* ;
- (2) annual income ;
- (3) value of property ;
- (4) area ;
- (5) date of the foundation of the *wagf* ;
- (6) the name of the founder ;
- (7) object of the *wagf* ;
- (8) the remuneration of the *mutawalli* ?

Hon'ble Rai Rajeshwar Bali : The statement† is laid on the honourable member's table.

NOMINATIONS TO MUNICIPAL AND DISTRICT BOARDS.

*58. **Dr. Shafa'at Ahmad Khan :** Will the Government be pleased to publish a list of persons nominated to each district board and municipal board of this province in 1923 and 1925 ?

Hon'ble Nawab Muhammad Yusuf : Nominations made by Government are published in the Gazette.

ELECTION OF CHAIRMAN, JEANSI.

*59. **Pandit Sri Krishna Dutt Paliwal** : Is it a fact that the delegates of the conference (convened by the Raja Sahib of Katera in 1925) stayed in the MacDonnell High School and were required to see Mr. Williamson before they attended the conference ?

Hon'ble Nawab Muhammad Yusuf : No.

*60. **Pandit Sri Krishna Dutt Paliwal** : Is it a fact that organization of the district for purposes of district board and Council elections was the main and real purpose of the conference ?

Hon'ble Nawab Muhammad Yusuf : Does not arise.

*61. **Pandit Sri Krishna Dutt Paliwal** : Is it a fact that Pandit Nanhu Prasad, honorary magistrate, got a letter from the district magistrate about 15 minutes before the meeting ?

Hon'ble Nawab Muhammad Yusuf : No.

REPRESENTATION OF INDIAN CHRISTIANS ON LOCAL BOARDS.

*62. **Mr. H. David** : Will the Government be pleased to state to what, if any, local boards, municipal and district, have Indian Christian representatives been nominated as members ?

Hon'ble Nawab Muhammad Yusuf : Indian Christians have been nominated to the district boards of Saharanpur, Pilibhit, Ballia, Lucknow, Sitapur, Fyzabad and Azamgarh and to the municipal boards of Bareilly, Bijnor, Chandausi, Tilhar, Fatehpur and Azamgarh.

*63. **Mr. H. David** : Has the Government received recommendations for such nominations, and, if so, for what places ?

Hon'ble Nawab Muhammad Yusuf : The Government received recommendations for nominations to the district boards of Saharanpur, Pilibhit, Ballia, Sitapur, Fyzabad, Bulandshahr, Agra, Unao and Etah and the municipal boards of Bareilly, Bijnor, Chandausi, Tilhar, Fatehpur and Agra.

*64. **Mr. H. David** : Will the Government be pleased to state if it is intended to make further nominations in suitable places to represent the Indian Christian community, and, if not, why not ?

Hon'ble Nawab Muhammad Yusuf : As Indian Christians have already been nominated in suitable places the Government do not propose to take any further action at present.

Mr. H. David : Does the Government know that the number of Indian Christians in the district of Meerut is the largest in the province ?

Hon'ble Nawab Muhammad Yusuf : It may be.

Mr. H. David : I think the Government may take it from me that the number is 22,000, or about that.

Hon'ble the President : I am afraid the honourable member is not entitled to give this information.

Mr. H. David : Will the Government state why Meerut is not considered a suitable place for nominating an Indian Christian to local boards ?

Hon'ble Nawab Muhammad Yusuf : The best available men were nominated.

Mr. H. David : Was an Indian Christian nominated to the municipal board of Budaun before the last elections ?

Hon'ble Nawab Muhammad Yusuf : Further notice.

Mr. H. David : Is it a fact that no Indian Christian has been nominated to the Budaun municipality now ?

Hon'ble Nawab Muhammad Yusuf : Not, as far as I am aware.

Mr. H. David : Is it a fact that a Muhammadan has been nominated at Budaun instead of an Indian Christian.

Hon'ble Nawab Muhammad Yusuf : Not instead of, I am afraid.

Khan Bahadur Maulvi Fasih-ud-din : Is it a fact that one seat is still vacant in Budaun ?

Hon'ble Nawab Muhammad Yusuf : Yes.

Mr. H. David : Does the Government intend to nominate an Indian Christian to it ?

Hon'ble Nawab Muhammad Yusuf : The Government will consider it.

Mr. H. David : Is it a fact that no Indian Christian was nominated to the Lucknow municipality in the last municipal board ?

Hon'ble Nawab Muhammad Yusuf : Further notice.

Mr. H. David : Is it a fact that no Indian Christian has been nominated to the Lucknow municipality this time ?

Hon'ble Nawab Muhammad Yusuf : Yes.

REGISTRATION OFFICE, BULANDSHAHR.

*66. **Pandit Nanak Ohand :** (a) Is it a fact that Anupshahr, Khurja and Bulandshahr Registration offices in Bulandshahr district are under the district registrar at Aligarh and tahsil Sikandrabad of Bulandshahr is under Meerut registration district and the registration records except for the last twelve years for the said tahsils are at Aligarh and Meerut respectively ?

(b) Is it a fact that the registration record room at Aligarh is reported to be congested ?

(c) Do Government intend, and, if so, when, to remove the old records for the said four tahsils from Aligarh and Meerut respectively to Bulandshahr Registration office in the new judgship and to create Bulandshahr registration district to meet the convenience of the public of Bulandshahr ?

Hon'ble Nawab Muhammad Yusuf : (a) Yes.

(b) Yes.

(c) The Government will remove the records to Bulandshahr after the creation of the Bulandshahr registration district, and propose to provide for the cost of the latter in the next year's budget.

AGRA TENANCY BILL.

Hon'ble Sir Sam. O'Donnell : I beg to present the report of the select committee on the Agra Tenancy Bill.

Hon'ble Sir Sam. O'Donnell : I beg to move that the Agra Tenancy Bill as reported by the select committee may be taken into consideration.

I do not propose to take up the time of the Council at this stage by any lengthy statement. I think the Council will agree that it is quite unnecessary for me to do so. The report of the select committee has been for some time in the hands of all members and they are doubtless familiar with it. The select committee made a number of changes; but most of them are of a minor character and there are only a few changes which can be said to be of substantial importance. We shall have an opportunity of discussing these amendments later, and therefore I shall reserve my remarks on them till we come to the relevant clauses.

Khan Bahadur Mr. Muhammad Ismail : I beg to move that the consideration of the report of the select committee on the Agra Tenancy Bill be adjourned till the 1st of July, 1926.

I shall very briefly state the reason that has led me to move this motion for adjournment. The report of the select committee will show that there is a great deal of divergence of opinion between the members of different shades of opinion. It is most desirable that legislation of this description should consider the requirements of all parties concerned—zamin-dars, tenants and Government; and we feel that unless this matter is discussed in a less formal atmosphere than the Council can afford, it is likely that a great deal of harm might be done to one party or another. Therefore some of the members of this House have been discussing the matter, and it has been decided that members of various shades of opinion and representing various parties should meet together and try to come to an amicable settlement. I therefore beg that you will be pleased to adjourn the Council till the 1st of July to enable us to discuss the matter.

Hon'ble the President : The motion is that the consideration of the Bill be adjourned till the 1st of July, 1926.

According to the programme, the 1st of July is a day reserved for official business. Under Standing Order No. 7A the motion is in order. Is the motion being opposed?

Hon'ble Sir Sam. O'Donnell : If there is a general desire of the Council that the debate should be adjourned till the 1st of July, I do not wish to oppose it. At the same time I have to point out what may be a possible consequence of the adjournment. We are none of us, I take it, anxious that the Council should sit for any length of time during the month of August. Most of the members who come from the plains at any rate consider, I believe, that the climatic conditions here in the month of August would not be such as would be very agreeable to them. If we are not to sit in the month of August, then of course it is essential that the various Bills before the Council including this Bill should pass through all their stages during the month of July. Now, Sir, I understand that the Muhammadan members are anxious that we should not sit after the 10th of July up to, say, the 22nd or 23rd of July. But, looking to the larger number of amendments which are before us, it

may be necessary for us, if this adjournment is made, to sit during the week following the 10th.

Pandit Nanak Chand : Only for two days.

Hon'ble Sir Sam. O'Donnell : It may be for two or three days. That all depends upon the rate at which amendments are disposed of. I believe there are over 500 amendments. I hope earnestly that all these amendments will not be moved, but that is a matter that is not in my control. I only wish to make it clear that if this adjournment is made, we may have to go on sitting after the 10th.

Hon'ble the President : The motion moved by Khan Bahadur Mr. Muhammad Ismail will now under Standing Order No. 7A be put without debate.

The motion was put and adopted.

The Council was thereupon adjourned until the 1st of July, 1926.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Thursday, July 1, 1926.

The Council met at Sherwood House, Naini Tal, at 11 a. m., Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(100)

- | | |
|---|--|
| Hon'ble Sir Sam O'Donnell. | Thakur Har Prasad Singh. |
| Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan. | Thakur Keshava Chandra Singh Chaudhri. |
| Hon'ble Rai Rajeshwar Ball. | Lieut. Raja Durga Narayan Singh. |
| Hon'ble Thakur Rajendra Singh. | Raja Narayan Pratap Singh. |
| Hon'ble Nawab Muhammad Yusuf. | Pandit Sri Krishna Dutt Paliwal. |
| Mr. G. B. Lambert. | Babu Parsidh Narayan Anad. |
| Mr. E. A. H. Blunt. | Pandit Yajna Narayan Upadhya. |
| Kunwar Jagdish Prasad. | Raja Sri Krishna Dutt Dube. |
| Sir Ivo Elliott, Bart. | Rai Sahib Babu Dip Narayan Roy. |
| Mr. P. H. Tillard. | Rai Bahadur Thakur Hanuman Singh. |
| Mr. H. A. Lane. | 2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur. |
| Mr. R. L. Yorke. | Raja Indrajit Pratap Bahadur Sahi. |
| Mr. R. Burn. | Bhaya Hanumat Prasad Singh. |
| Mr. A. W. Pim. | Pandit Govind Ballabh Pant. |
| Mr. B. J. K. Hallows. | Pandit Hargovind Pant. |
| Mr. E. L. Norton. | Mr. Mukandi Lal. |
| Mr. H. G. Billson. | Rai Bahadur Thakur Mashal Singh. |
| Mr. R. J. S. Dodd. | Babu Sita Ram. |
| Colonel A. W. R. Cochrane. | Kunwar Krishna Pratap Singh. |
| Mr. A. H. Mackenzie. | Mr. Muhammad Aslam Saifi. |
| Mr. M. F. P. Herchenroder. | Maulvi Zahur-ud-din. |
| Raja Muhammad E'jaz Rasul Khan. | Rao Sahib Abdul Hamid Khan. |
| Raja Bahadur Brij Narayan Rai. | Maulvi Shahab-ud-din. |
| Mr. H. C. Desanges. | Khan Bahadur Chaudhri Amir Hasan Khan. |
| Mr. H. David. | Mr. Muhammad Ismail Ali Khan. |
| Babu Khem Chand. | Maulvi Muhammad Obaid-ur-Rahman Khan. |
| Lala Kishan Lal. | Khan Bahadur Hafiz Hidayat Husain. |
| Babu Narayan Prasad Arora. | Khan Bahadur Shaikh Masud-uz-Zaman. |
| Babu Sangam Lal. | Khan Bahadur Mr. Muhammad Ismail. |
| Babu Mohan Lal Saksona. | Maulvi Abdul Hakim. |
| Babu Damodar Das. | Dr. Shafa'at Ahmad Khan. |
| Babu Jai Narayan Chaudhri. | Saiyid Muhammad Ashiq Hussain. |
| Babu Bhagwati Sahai Bedar. | Khan Bahadur Maulvi Fasih-ud-din. |
| Thakur Manjit Singh Rathor. | Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan. |
| Chaudhri Jaswant Singh. | Khan Bahadur Hakim Mahbub Ali Khan. |
| Rai Sahib Chaudhri Sheoraj Singh. | Khan Bahadur Munshi Siddiq Ahmad. |
| Pandit Nanak Chand. | Raja Saiyid Ahmad Ali Khan Alvi. |
| Lala Babu Lal. | Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf. |
| Thakur Rajkumar Singh. | Shaikh Abdus Samad Ansari. |
| Thakur Shiva Narayan Singh. | Mr. St. George H. S. Jackson. |
| Rai Bahadur Babu Ram Nath Bhargava. | Lala Behari Lal. |
| Rai Amba Prasad Sahib. | Rai Bahadur Lala Mathura Prasad Mehrotra. |
| Rai Bahadur Pandit Kharagjit Misra. | Raja Shambhu Dayal. |
| Raja Suryopal Singh. | Lieut. Raja Shaikh Imtiaz Rasul Khan. |
| Lala Dhakan Lal. | Raja Jagannath Bakhsh Singh. |
| Babu Nemi Saran. | Mr. E. M. Souter. |
| Chaudhri Badan Singh. | Mr. Tracey Gavin Jones. |
| Rao Sahib Kunwar Sardar Singh. | Dr. Ganesh Prasad. |
| Thakur Sadho Singh. | |
| Pandit Brijnandan Prasad Misra. | |
| Pandit Bhagwat Narayan Bhargava. | |
| Pandit Jhanni Lal Pande. | |

QUESTIONS AND ANSWERS.

(Listed for June 29, 1926.)

STARRED QUESTIONS.

MUKHTARSHIP EXAMINATIONS.

* 1. **Mr. Muhammad Aslam Saifi**: Will the Government be pleased to state if it is a fact that revenue agents who appear in the Mukhtarship examination have also to appear in the following subjects in which they have already passed the examination as revenue agents:—

- (1) Rent and Revenue Laws,
- (2) Civil Procedure Code,
- (3) Evidence,
- (4) Stamp, Court-fees, Limitation ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: Yes.

* 2. **Mr. Muhammad Aslam Saifi**: If the reply be in the affirmative, do Government intend to abolish re-examination in the aforesaid subjects ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: As the High Court is going to abolish this examination, there is no need to consider the suggestion of the honourable member.

TEACHING OF CIVICS IN INTERMEDIATE COLLEGES.

* 3. **Dr. Ganesh Prasad**: Will the Government be pleased to state when it intends to make provision in the Government intermediate colleges for the teaching of civics ? Is it a fact that civics is a subject prescribed for the intermediate examination of the Board of High School and Intermediate Education ?

Hon'ble Rai Rajeshwar Bali: (a) No definite time can be stated ; when Government receive an application for the provision of the teaching of civics in a Government intermediate college, it will be considered on its merits.

(b) Yes.

Dr. Ganesh Prasad: Who is to apply—the principal of a college or the Director of Public Instruction ?

Hon'ble Rai Rajeshwar Bali: The principal.

M. A'S AND M. SC'S IN SUBORDINATE EDUCATIONAL SERVICE.

* 4. **Dr. Ganesh Prasad**: Will the Government be pleased to furnish a statement showing the number of second class M. A's and M. Sc's in the grade of Rs. 100—10—300 of the Subordinate Educational Service, together with the subjects they took up for their Master's degree ?

Hon'ble Rai Rajeshwar Bali :

(a) M. A's:—

- One in English.
- Two in History.
- One in Persian.
- One in Mathematics.

(b) M. Sc's:—

- One in Zoology.

LAND REVENUE AND CESSSES OF UNITED PROVINCES.

* 5. **Khan Bahadur Hafiz Hidayat Hussain** : (i) What is the entire amount of land revenue and cesses of the United Provinces ?

(ii) How much out of this is paid by the Hindus ?

(iii) How much by the Muslims ?

(iv) How much by others ?

Hon'ble Sir Sam O'Donnell : For a statement of the land revenue payable by each of the three classes mentioned by the honourable member he is referred to the answer given to starred question No. 8 on February 23, 1926. The cesses are approximately one-tenth of the land revenue.

(Answer to starred question No. 8 asked by Dr. SHAFI'AT AHMAD KHAN on February 23, 1926, and the reply given thereto.)

* 8. **Dr. Shafi'at Ahmad Khan** : Will the Government be pleased to state in the tabular form given below—

The number of (1) non-Muslim, (2) Christian, and (3) Muslim land-owners in every district of the United Provinces of Agra and Oudh, who pay annually land revenue of (1) Rs. 20 to Rs. 40, (2) Rs. 40 to Rs. 80, (3) Rs. 80 to Rs. 100, (4) Rs. 100 to Rs. 150, (5) Rs. 150 to Rs. 200, (6) Rs. 200 to Rs. 250, (7) Rs. 250 to Rs. 300, (8) Rs. 300 to Rs. 400, (9) Rs. 400 to Rs. 600, (10) Rs. 600 to Rs. 800, (11) Rs. 800 to Rs. 1,000, (12) Rs. 1,000 to Rs. 1,500, (13) Rs. 1,500 to Rs. 2,500, (14) Rs. 2,500 to Rs. 3,000, (15) Rs. 3,000 to Rs. 4,000, (16) Rs. 4,000 to Rs. 5,000, (17) Rs. 5,000 to Rs. 6,000, (18) Rs. 6,000 to Rs. 7,000, (19) Rs. 7,000 to Rs. 8,000, (20) Rs. 8,000 to Rs. 9,000, (21) Rs. 9,000 to Rs. 10,000, (22) Rs. 10,000 to Rs. 15,000, (23) Rs. 15,000 to Rs. 30,000, (24) Rs. 30,000 to Rs. 50,000, (25) Rs. 50,000 to Rs. 1,00,000, (26) Rs. 1,00,000 to Rs. 2,00,000, (27) Rs. 2,00,000 to Rs. 3,00,000, (28) Rs. 3,00,000 to Rs. 5,00,000, (29) Rs. 5,00,000 to Rs. 3,00,000, (30) Rs. 3,00,000 to Rs. 12,00,000, (31) Rs. 12,00,000 to Rs. 20,00,000, (32) Rs. 20,00,000 to Rs. 30,00,000, (33) Rs. 30,00,000 to Rs. 40,00,000 and upwards ?

As this inquiry is essential, will the Government be pleased to ask the collectors of each district to submit returns from each district and lay the statement on the table of the House ?

ANSWER.

Hon'ble Sir Sam O'Donnell : A statement compiled in the form accepted by the honourable member is laid on the table.

(See Appendix A, page 196.)

SANITARY INSPECTOR FOR AGRA CANTONMENTS.

* 6. **Rao Sahib Abdul Hameed Khan** : Is it a fact that the sanitary inspector employed by the cantonment authority of Agra is not a qualified and trained sanitary inspector ?

* 7. If the answer to the foregoing question is in the affirmative, will the Government be pleased to state if they approve of the employment of untrained sanitary inspectors when trained sanitary inspectors can easily be found ?

* 8. Does the Government intend to take any step to ensure that the cantonment authority of Agra keeps a duly qualified and trained sanitary inspector ?

* 9. Is it a fact that the sanitary condition of the Agra cantonment is in a very bad state, and the cantonment public has got great complaints about it ?

* 10. Will the Government be pleased to state to what reason the unsatisfactory sanitary condition of the Agra cantonment is due ?

Hon'ble Sir Sam O'Donnell : The questions do not concern this Government and should have been asked in the Legislative Assembly.

CLERICAL STAFF OF THE OFFICE OF INSPECTOR-GENERAL OF CIVIL HOSPITALS.

* 11. **Mr. Muhammad Aslam Saifi** : What constitutes the personnel of the clerical staff of the office of the Inspector-General of Civil Hospitals, including the offices of the Medical Council, Secretary, State Board of Medical Examinations, and the Organizing Secretary of the Lady Chelmsford League, and which posts in these establishments are held by the Muslims and Hindus respectively ?

Hon'ble Rai Rajeshwar Bali : The personnel of the clerical staff of the offices is as follows :—

Office of Inspector-General of Civil Hospitals.	One head assistant, fifteen clerks and one stenotypist.
Offices of Medical Council and Secretary, State Board of Medical Examinations.	One clerk for both offices.
Office of Organizing Secretary, Lady Chelmsford League.	One temporary clerk.

The posts in these establishments are held as noted below :—

Office of Inspector-General of Civil Hospitals.

Head Assistant	...	...	Hindu.
Clerks	...	...	Twelve Hindus, two Muhammadans, one Christian and one stenographer (Hindu).

Office of Medical Council and Secretary, State Board of Medical Examinations.

One Hindu clerk.

Office of Organizing Secretary.

One Hindu clerk.

* 12. **Mr. Muhammad Aslam Saifi** : Will the Government be pleased to give the names of clerks permanently appointed in that office in the last eight years ?

Hon'ble Rai Rajeshwar Bali : The following four clerks were appointed during the last eight years :—

- (1) Babu Mohan Lal Agarwal.
- (2) Pandit Rudri Dat Pant.
- (3) Babu Brij Kishore Karan.
- (4) Pandit Shitla Prasad Dikshit.

DISTRICT HEALTH SCHEME.

* 13. **Mr. Muhammad Aslam Saifi** : In how many districts has the district health scheme been introduced ?

Hon'ble Rai Rajeshwar Bali : Seventeen.

MEDICAL OFFICERS OF HEALTH.

* 14. **Mr. Muhammad Aslam Saifi** : What is the number of district and assistant district medical officers employed ?

Hon'ble Rai Rajeshwar Bali : The number of district medical officers of health is seventeen and that of assistant medical officers of health eighteen, of which one post is at present vacant.

* 15. **Mr. Muhammad Aslam Saifi** : How many of them are Muslims, Hindus and Christians ?

Hon'ble Rai Rajeshwar Bali : The information is given below :—

—	Muslims.	Hindus.	Christians.	Sikhs.
District medical officers of health ..	2	14	1	1
Assistant district medical officers of health..	..	16	..	..

* 16. **Mr. Muhammad Aslam Saifi** : What is the number of medical officers of health employed in the municipalities ?

Hon'ble Rai Rajeshwar Bali : Twenty-three.

* 17. **Mr. Muhammad Aslam Saifi** : How many of them are Muslims, Hindus and Christians ?

Hon'ble Rai Rajeshwar Bali :

Muslims	...	...	...	...	2
Hindus	...	...	...	...	20
Parsis	...	...	...	...	1
Christians	...	...	...	...	...

CLERICAL STAFF OF THE OFFICE OF DIRECTOR OF LAND RECORDS
AND INSPECTOR-GENERAL OF REGISTRATION.

* 18. **Mr. Muhammad Aslam Saifi** : Will the Government be pleased to give the names of the clerks permanently appointed in the office of the Director of Land Records and the Inspector-General of Registration during the last five years ?

Hon'ble Sir Sam O'Donnell : A statement showing the names of the clerks permanently appointed in the offices of the Director of Land Records and the Inspector-General of Registration is placed on the table.

(See Appendix B, page 198.)

* 19 to 44. **Rai Bahadur Babu Vikramajit Singh** : [Postponed at the request of Government till the first day of the meeting after the Muharram holidays.]

ELECTRIC SCHEMES IN UNITED PROVINCES AND THEIR STAFF.

* 45. **Mr. Muhammad Aslam Saifi** : Will the Government be pleased to state—

(a) in how many cities electric schemes are working in the United provinces ;

(b) for how many other districts in the United Provinces licences have been granted for the electrification of cities ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : A statement is placed on the honourable member's table.

(See Appendix C, page 198.)

* 46. **Mr. Muhammad Aslam Saifi** : What is the control of Government Electric Inspector upon the staff and personnel appointed by licensees as regards their technical qualifications and as regards the representation of different communities ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : None.

* 47. **Mr. Muhammad Aslam Saifi :** The maintenance and repairs having been transferred to heads of departments, what arrangements are now made for looking after the electric installations in Government buildings still retained under the charge of the Public Works department in Lucknow, Allahabad, Agra, Dehra Dun, Cawnpore, Mussoorie, Bareilly, Moradabad, Saharanpur and Meerut, and who is directly responsible for this work ?

Hon'ble Nawab Muhammad Yusuf : Maintenance and repairs of the electrical installations in Government buildings retained with the Public Works department are still carried out by the Public Works department.

In the case of the installations in the Lucknow district, the Electric Inspector to Government, United Provinces, is directly responsible, whereas in the case of the installations in the Allahabad, Agra, Dehra Dun, Cawnpore, Bareilly, Meerut and Naini Tal districts the officers directly responsible are the executive engineers of the divisions concerned.

* 48. **Mr. Muhammad Aslam Saifi :** How many electric overseers are at present employed under the Electric Inspector ? What are their present salaries ? In what grade of service are they placed ?

Hon'ble Nawab Muhammad Yusuf : (i) Three.

(ii) Rupees 185, Rs. 122 and Rs. 80, respectively.

(iii) Two permanent on Rs. 80—7—227 and one temporary on Rs. 80.

* 49. **Mr. Muhammad Aslam Saifi :** What are (1) their qualifications—(a) technical, (b) educational ; (2) their dates of appointment to their present posts ; (3) the dates of their passing out from technical schools ; and (4) previous experience in the line, if any ?

Hon'ble Nawab Muhammad Yusuf : A statement giving the qualifications, etc., is laid on the honourable member's table.

(See Appendix D, page 199.)

* 50. **Mr. Muhammad Aslam Saifi :** What is the nationality of the electric overseers employed under the Electric Inspector of the Government at present ?

Hon'ble Nawab Muhammad Yusuf : Indian.

* 51. **Mr. Muhammad Aslam Saifi :** Why has no Muhammadan yet been employed by Government as electric overseer ?

Hon'ble Nawab Muhammad Yusuf : Until this year no Muslim has ever applied for these posts.

* 52. **Mr. Muhammad Aslam Saifi :** Is the Government contemplating to create some new posts of electric overseers ? If so, do Government intend to appoint a fair and proportionate number of Muslims in the line as early as possible ?

Hon'ble Nawab Muhammad Yusuf : (i) Yes.

(ii) Applications are now being invited by public advertisement and the applicant having the best qualifications will be appointed.

CLERKS AND MUNSARIMS IN JUDGESHIP, ALIGARH.

* 53. **Mr. Muhammad Aslam Saifi :** Will the Government be pleased to state the total number of munsarims in the Aligarh judgeship ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Twelve.

* 54. **Mr. Muhammad Aslam Saifi :** Will the Government be pleased to state the total number of Kayasths and Muhammadans amongst them ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Ten Kayasths, one Muhammadan.

Mr. Muhammad Aslam Saifi : Is the Government aware that a Government order was issued to the effect that one particular community or caste should not predominate in the personnel of an office ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : It is the intention of the Government that the attention of the authorities concerned should be drawn to it.

* 55. **Mr. Muhammad Aslam Saifi :** Will the Government be pleased to state the total number of clerks in the Aligarh judgship and will the Government be pleased to give a list of all the clerks, stating the salary which each of them draws ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : One hundred and forty-seven. A list† is placed on the table of the honourable member.

HINDI BOOK *Vichitra Jiwan*.

* 56. **Khan Bahadur Shaikh Masud-uz-Zaman :** Will the Government be pleased to state if a Hindi book named *Vichitra Jiwan*, written by Kali Charan Sharma, editor of *Arya Musafir*, a vernacular weekly paper of Agra, has been published and circulated ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes.

Mr. Muhammad Aslam Saifi : Has the attention of the Government been drawn to the fact that this book contains some offensive passages with regard to the prophets ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes.

Mr. Muhammad Aslam Saifi : Has the Government taken any action ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : We have ordered prosecution.

* 57. **Khan Bahadur Shaikh Masud-uz-Zaman :** Will the Government be pleased to state where the book mentioned in the foregoing question has been printed ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : At Agra and Moradabad.

GRANTS TO SECONDARY SCHOOLS.

* 58. **Khan Bahadur Hafiz Hidayat Husain :** Will the Government be pleased to lay a statement on the table giving details and the classification of headings under which grants to all secondary schools of these provinces during the years 1925-26 and 1926-27 were given ?

How much out of these were given to purely Muslim institutions and how much to purely Hindu institutions and how much to other institutions ?

What is the enrolment of each group of these schools and what is the incidence of the grant per boy worked out from these figures?

Hon'ble Rai Rajeshwar Ball : Statements† are laid on the table of the honourable member. Figures of enrolment are not available.

PROVINCIAL JUDICIAL OFFICERS.

*59. **Khan Bahadur Hafiz Hidayat Hussain :** Will the Government be pleased to state the number of provincial judicial officers in the Provinces of Agra and Oudh separately? How many of these are—

- (i) Hindus,
- (ii) Muslims,
- (iii) Christians,
- (iv) Others?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The information required is given below :—

					<i>Agra.</i>	<i>Oudh.</i>
Hindus ..	..	..	..	..	107	43
Muslims ..	..	..	..	..	84	19
Christians ..	..	..	..	..	4	..
Others ..	..	..	..	..	1	..
Total				..	146	61

APPOINTMENT OF ENGINEERS.

*60. **Khan Bahadur Hafiz Hidayat Hussain :** (1) Does paragraph 9, Public Works Department Code, as amended by Standing Order No. 27, Code Circular No. 2, enjoin that ordinarily appointments to the department should be made from the Roorkee College students?

(2) How many engineers are there serving in the Public Health department of these provinces? How many out of these are Roorkee and United Provinces men and how many are outsiders?

(3) Do the Government intend to take steps to give due consideration to the United Provinces men in making appointments in future?

Hon'ble Nawab Muhammad Yusuf : (1) Yes, so far as the recruitment to the India-recruited branch of the Indian Service of Engineers is concerned.

(2) (a) Eighteen.

(b) Thirteen.

(c) Five.

(3) Yes.

Khan Bahadur Hafiz Hidayat Hussain : Is the Government aware that this rule was not observed in making previous appointments?

Hon'ble Nawab Muhammad Yusuf : I am not aware.

JAMA MASJID AND THE TURKISH BATH, PILIBHIT.

*61. **Khan Bahadur Hafiz Hidayat Hussain :** Is the Government aware that the Jama masjid and the *hammam* (Turkish bath) at Pilibhit are more than three hundred years old and are held in great regard by the Muslim

public? Do the Government intend to give these buildings the benefit of the Ancient Monuments Act?

Hon'ble Sir Sam O'Donnell : (i) Yes.

(ii) The Jama masjid is a protected monument under the Act.

(iii) The protection of Turkish bath can be considered on the receipt of application from the owner.

* 62. **Khan Bahadur Hafiz Hidayat Husain :** [*Postponed at the request of the Government till the first day of the meeting after the Muharram holidays.*]

DEPRESSED CLASSES.

* 63. **Khan Bahadur Hafiz Hidayat Husain :** Are the Government in a position to enumerate the castes included in the category of depressed classes?

Have the Government so far defined the term "depressed class?"

If not, what is the precise difficulty that the Government feels in attempting a definition?

Hon'ble Sir Sam O'Donnell : (a) No.

(b) No.

(c) Responsible Hindu opinion is not agreed on the subject.

* 64. **Khan Bahadur Hafiz Hidayat Husain :** For which castes are schools for depressed classes meant? Have any boys been refused admission into these schools because they did not belong to the depressed classes? If so, of what castes were they?

Hon'ble Rai Rajeshwar Bali : As regards the first part of the question, the honourable member is referred to the answer given to Council question No. 86 for March 12, 1926. As regards the second part of the question, Government have no information. The third part of the question does not arise.

* 65. **Khan Bahadur Hafiz Hidayat Husain :** Are Musalmans whose parents follow the same professions that members of Hindu depressed classes follow, e.g., bhangis, chamars, kunjras, manihars, etc., allowed to take advantage of these schools for depressed classes? If not, why is this distinction made?

Hon'ble Rai Rajeshwar Bali : The honourable member is referred to the answer given to Council question No. 85 for March 12, 1926.

(Copies of starred questions Nos. 85 and 86 asked by KHAN BAHADUR HAFIZ HIDAYAT HUSAIN on March 12, 1926, and of the replies given thereto.)

QUESTION.

* 85. Are bhangis, barbers, butchers, dhobis and kunjras professing the Muslim faith included in depressed classes? If so, are these classes given the benefit of facilities provided for the education of depressed classes in these provinces?

ANSWER.

The reply to both parts of the question is in the negative.

QUESTION.

* 86. Will the Government be pleased to give a list of castes, professions and religions of depressed classes for whom special representation by nomination is provided in the municipal and district boards and for whose education special rules have been framed by the Government?

ANSWER.

Government cannot undertake to frame any specific list of depressed classes. They regard the expression as an elastic one, to be interpreted with reference to local conditions.

HINDI BOOK—*Vichitra Jiwan*.

* 66. **Khan Bahadur Hafiz Hidayat Husain** : Have the Government seen *Vichitra Jiwan*, printed in Nagri at the Agra Musafir Press, Agra, and written by one Kali Charan Sharma, editor of *Arya Musafir*, Agra? Has the attention of the Government been drawn to the calumnies and invectives levelled against the Prophet of Arabia in this book? Are the Government aware that this book has caused great indignation among the Musalmans? Do the Government propose to proscribe the book and prosecute the writer?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes. A prosecution has been sanctioned. There is no provision of law under which this pamphlet can be proscribed.

RECOMMENDATIONS OF THE LEE COMMISSION.

* 67. **Khan Bahadur Hafiz Hidayat Husain** : How long do the Government expect to take to give full effect to the accepted recommendations of the Lee Commission that twenty per cent. of the superior posts should eventually be filled by recruitment from the provincial service?

Will the Government be pleased to state the steps and the stages by which this recommendation will be carried out?

How long will it take to work up to the full percentage and what are the difficulties in the way of its being given effect to at an early date?

What has been the extent of the start made?

Hon'ble Sir Sam O'Donnell : The programme accepted by the Secretary of State for India is that thirteen more posts should be listed in fifteen years, reckoning from April 1, 1924.

Notifications listing two more posts and making appointments to them are under issue.

ARMS LICENCES FOR *mukhtias*.

* 68. **Khan Bahadur Hafiz Hidayat Husain** : Are village headmen allowed possession of guns in virtue of their offices? If not, do the Government intend to issue licences for guns to *mukhtias* more freely?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : (i) No.

(ii) Village headmen of good position or meritorious service are considered to have a claim to a gun licence superior to the claims of other residents in the village.

PROVINCIAL DISTRICT BOARD CONFERENCE.

* 69. **Khan Bahadur Hafiz Hidayat Husain** : Does the Hon'ble Minister of Local Self-Government intend to call this year another Provincial District Board Conference as was held last year? If so, when?

Hon'ble Nawab Muhammad Yusuf : Government are considering the possible agenda, and have not definitely decided the question.

ISLAMIA SCHOOLS AND *mak'tabs*.

* 70. **Khan Bahadur Hafiz Hidayat Husain** : Have the Government received any representation from any of the municipal or district boards or from any other source, or has it been brought to the notice of the

Government by any other means that the minimum expenditure provided for Islamia schools and *maktabs* included in the lump grant to district boards as shown in column VI of G. O. No. 492/XV—764, dated September 17, 1924, was wholly inadequate?

In view of the admitted fact that several Islamia schools and *maktabs* were closing on account of paucity of funds, what action have the Government taken to supplement the funds?

Hon'ble Rai Rajeshwar Bali: (1) Representations in the matter have been received from certain district boards. The claims of these boards have been examined and extra grants have been sanctioned in the current year to four boards which had made out a case for the revision of grants given under the three years' contract.

(2) Government have no information that Islamia schools and *maktabs* were being closed.

Pandit Nanak Chand: Is the Hon'ble Minister in a position to state what amounts have been allotted in this arrangement to Saharanpur and Bulandshahr?

Hon'ble the President: How does that arise out of the question on the notice paper?

* 71. **Khan Bahadur Hafiz Hidayat Husain:** Will the Government be pleased to lay on the table a statement compiled districtwise showing—

- (i) number of schools and *maktabs* closed up to May 1, 1926;
- (ii) applications for opening Islamia schools and *maktabs* disallowed by the district boards up to May 1, 1924?

Hon'ble Rai Rajeshwar Bali: (i) By "schools" the honourable member presumably means "Islamia schools." If so, figures will be collected if the honourable member will state the precise period for which the information is required.

(ii) The period for which figures are required is not stated. The honourable member is, however, referred to the reply given to unstarred question No. 4 on March 11, 1926.

(Copy of unstarred question No. 4 asked by KHAN BAHADUR HAFIZ HIDAYAT HUSAIN on March 1, 1926, and the reply given thereto.)

QUESTION.

Will the Government be pleased to supply the information promised in answer to starred question No. 21 of April 1, 1925, regarding *pathshalas* and unstarred question No. 7, dated December 14, 1925, regarding Islamia schools?

REPLY.

Statements are placed on the tables of the honourable members concerned.

* 72. **Khan Bahadur Hafiz Hidayat Husain:** Are the Government aware that the district boards as a rule refuse to give any grant from their own funds for Islamia schools and *maktabs*?

If not, will the Government be pleased to make inquiries in the matter and issue necessary orders?

Hon'ble Rai Rajeshwar Bali: (i) Government prescribe for district boards a minimum expenditure, which is met partly from the boards' own funds and partly from Government grants, on Islamia schools and *maktabs*. All boards are working up to the minimum prescribed.

(ii) Does not arise.

DISTRICT BOARD SERVANTS.

* 73. **Khan Bahadur Hafiz Hidayat Husain** : With reference to my starred question No. 58 of December 14, 1925, and the reply of the Government thereon, will the Government be pleased to state the result of their considerations regarding district board servants ?

Hon'ble Nawab Muhammad Yusuf : (a) A copy of the rules for servants of the district boards, published with notification No. 566 of June 17, 1926, is laid on the honourable member's table. The Government are not prepared to take steps to provincialize the clerical posts under the district boards, nor are they prepared to frame a rule to provide for an appeal against an order of punishment by the board.

CORRUPTION AMONGST PUBLIC SERVANTS.

* 74. **Khan Bahadur Hafiz Hidayat Husain** : With reference to my starred question No. 68 of August 19, 1925, will the Government be pleased to lay on the table the instructions they have issued pursuant to the resolution adopted by the Council on January 27, 1925, regarding corruption amongst public servants ?

Hon'ble Sir Sam O'Donnell : This matter is receiving constant attention, and the instructions issued are confidential. Their effect would be largely nullified if they were published.

LOCAL OPTION BILL.

* 75. **Khan Bahadur Hafiz Hidayat Husain** : Have the Government prepared any draft of a Bill for the introduction of "local option?"

When do Government intend to introduce the Bill in the Council ?

Hon'ble Thakur Rajendra Singh : As regards the first part of the question, a Bill has been drafted and is being examined by Government.

As regards the second part of the question, Government are unable to make any statement at present.

MUSLIM SEATS IN NAINI TAL MUNICIPALITY.

* 76. **Khan Bahadur Hafiz Hidayat Husain** : Have the Government yet come to any decision on the memorial of the Muslim inhabitants of Naini Tal asking for reservation of certain fixed seats for Muslims in the Naini Tal municipal board ?

Hon'ble Nawab Muhammad Yusuf : Yes.

* 77 and 78. **Khan Bahadur Hafiz Hidayat Husain** : *[Postponed at the request of Government till the first day of the meeting after the Muharram holidays.]*

UTILIZATION BY GOVERNMENT OF REMISSION OF 33 LAKHS.

* 79. **Khan Bahadur Hafiz Hidayat Husain** : How has the additional remission of 33 lakhs by the Government of India been utilized by the Government ?

Hon'ble Sir Sam O'Donnell : A part of it was used in the supplementary estimates presented to Council on April 6. The rest is in the provincial balance.

SINGLE-RECORD SYSTEM IN CIVIL COURTS.

* 80. **Khan Bahadur Hafiz Hidayat Husain** : With reference to my starred question No. 14 of August 20, 1925, will the Government be pleased to request the Hon'ble the High Court of Judicature at Allahabad to report if the single-record system introduced by the Hon'ble Court for mofussil courts at the instance of the Government has succeeded as an experiment and whether its maintenance is further desirable ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The High Court was recently asked for a report and has intimated to Government its view that it is too early yet to give a considered opinion on the success or failure of the system.

Khan Bahadur Hafiz Hidayat Husain : Will the Government consider the advisability of consulting the Bar Associations and important personages ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Government would rather prefer to get the opinion of the High Court first.

OIL *kolhus* AND FLOUR *chukkis* IN JAILS.

* 81. **Khan Bahadur Hafiz Hidayat Husain** : Are prisoners still allowed to work on oil *kolhus* and flour *chukkis* in the jails of the province ? Do the Government propose to substitute these forms of labour by tailoring or carpentry work ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes; oil and flour are necessary for prisoners in jail, and it is reasonable that prisoners should themselves prepare them for use. Government do not therefore intend to abolish these forms of labour for prisoners sentenced to rigorous imprisonment. But, to make the labour lighter, Government have allotted Rs. 6,000 for the purchase of an improved type of oil-mill and they have also decided that no prisoner shall be employed on this form of labour for more than fifteen days at a time or for more than four months in the year.

Pandit Nanak Chand : For how many hours a day the prisoners are required to work at mills in jails ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : I am not aware; but if the honourable member is anxious to know about this I shall find out.

CHAUKIDARS' REGISTER OF BIRTHS AND DEATHS.

* 82. **Khan Bahadur Hafiz Hidayat Husain** : Do the Government propose to preserve the chaukidars' register of births and deaths permanently instead of destroying them after fifteen years as is done now ?

Hon'ble Nawab Muhammad Yusuf : The Government have decided that the chaukidars' register of births and deaths should be retained for three years and that the register of births and deaths compiled at thanas should be retained permanently.

SUPERVISORS OF ISLAMIA SCHOOLS AND *maktabs*.

* 83. **Khan Bahadur Hafiz Hidayat Husain** : Has the appointment of supervisors of Islamia schools and *maktabs* in the three districts.

Hardoi, Bareilly and Basti passed the experimental stage now? How long has the experiment lasted, how long is it expected to last, and what is the result of the experiment so far?

Hon'ble Rai Rajeshwar Bali : The appointments of supervisors in the three districts were sanctioned in 1923. The reports already received are not sufficiently decisive to justify extension of the scheme which therefore still remains in the experimental stage.

Mr. Muhammad Aslam Saifi : Will the Hon'ble Minister be pleased to lay these reports on the table?

Hon'ble Rai Rajeshwar Bali : The matter will be considered.

SUPERINTENDENTS OF JAILS.

* 84. **Khan Bahadur Hafiz Hidayat Husain :** When do the Government propose to appoint whole-time superintendents of the larger district jails in these provinces in accordance with the recommendations of the Indian Jails Committee of 1919?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Government see no prospect of funds becoming available for the purpose at present.

NEW COUNCIL CHAMBER.

* 85. **Khan Bahadur Hafiz Hidayat Husain :** Will the Government be pleased to state how many cracks have appeared so far in the arches of the new Council Chamber? What are they due to? Are they expected to prove dangerous at some time? If so, when? What do the Government propose to do in the matter?

Mr. P. H. Tillard : (i) Seventy-nine.

(ii) Unequal settlement in the foundations.

(iii) The architect who is responsible for the construction reports that they are not dangerous.

(iv) Does not arise.

(v) Government are having careful observations made.

JAIL MANUAL AND EDUCATION CODE.

* 86. **Khan Bahadur Hafiz Hidayat Husain :** Do the Government contemplate revision of the Jail Manual and the Education Code? If so, when are the revised editions likely to issue?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The revision of the Jail Manual is in progress. It is not possible as yet to fix a date for the issue of the new edition.

Hon'ble Rai Rajeshwar Bali : As regards the Educational Code, the matter is under consideration.

SEPARATION OF AUDIT AND ACCOUNTS.

* 87. **Khan Bahadur Hafiz Hidayat Husain :** Will the Government be pleased to state in which departments have audit and accounting been separated? How long has the experiment lasted and with what result?

Hon'ble Sir Sam O'Donnell : The separation of audit and accounts was made in the Police and Education departments in April, 1924. It

was a success, and since April, 1926 has been introduced in all departments. For details of the scheme the honourable member is referred to the Accountant-General's circulars No. 91 and No. 90, which appeared in Part V of the *United Provinces Gazette* of March 27, 1926. Judging from results up to date, Government fully expect that the major experiment now undertaken will also be successful.

CATTLE CENSUS REPORT.

* 88. **Khan Bahadur Hafiz Hidayat Husain**: Will the Government be pleased to lay on the table a statement showing the number of live-stock under the heads bulls, bullocks, cows, young stock (calves), male buffaloes, cow-buffaloes, young stock (buffalo-calf), etc., in the United Provinces (including Almora and Garhwal, if possible) ascertained by census held in January, 1920?

Hon'ble Thakur Rajendra Singh: A copy of the cattle census report† for 1920 is laid on the honourable member's table.

JUDGESHIP AT BANDA.

* 89. **Khan Bahadur Hafiz Hidayat Husain**: Is it the intention of this Government to establish a separate judgeship at Banda?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: No.

DARANAGAR AND GARHMUKHTESAR FAIRS.

* 90. **Khan Bahadur Hafiz Hidayat Husain**: Will the Government be pleased to state if they have yet been able to determine whether the General Administration department or the district boards should be held responsible for the management of the customary fairs, e.g., Daranagar in the district of Bijnor and Garhmukhtesar fair?

Hon'ble Nawab Muhammad Yusuf: No; the subject will be further discussed in conference with chairmen of district boards.

APPOINTMENT OF MUSLIM MEMBER OF THE PROVINCIAL FOREST SERVICE TO THE IMPERIAL FOREST SERVICE.

* 91. **Khan Bahadur Hafiz Hidayat Husain**: Have the Government appointed any Muslim member of the Provincial Forest Service to the Imperial Forest Service as promised in reply to unstarred question No. 11, dated March 26, 1924, asked by Nawab Muhammad Yusuf Sahib?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: Yes.

Khan Bahadur Hafiz Hidayat Husain: How many of them?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: One.

KOTWALS AS DEPUTY SUPERINTENDENTS.

* 92. **Khan Bahadur Hafiz Hidayat Husain**: When do the Government propose to raise the kotwals of Cawnpore, Agra, Lucknow and Allahabad to the status of deputy superintendents of police in the cadre?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: The proposal will cost Rs. 21,540 per annum and is awaiting the provision of

funds. Meanwhile, as a temporary measure, a deputy superintendent has been placed in charge of Lucknow, and temporary deputy superintendents in charge of Agra, Bareilly, Benares and Meerut.

Khan Bahadur Hafiz Hidayat Hussain : Why not at Cawnpore, the only city left now ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : If the department will consider it necessary to have a deputy superintendent there, perhaps they will do so in due course.

UNSTARRED QUESTIONS.

MAJOR RAHMAN, PRINCIPAL, MEDICAL SCHOOL, AGRA.

1. **Dr. Zia-ud-din Ahmad :** Has the order No. 597/V—242, dated August 17, 1921 (Medical department), regarding Major M. A. Rahman, I.M.S., been rescinded ?

If the answer be in the affirmative, will the Government be pleased to give the date and the number of the order rescinding the above order ?

In view of the above order whether Major M. A. Rahman, I.M.S., should be called officiating or a permanent principal ?

Sir Ivo Elliott : The Government have not cancelled notification No. 597/V—242, dated August 17, 1921, but have laid down in G. O. No. 4421/V—242, dated August 6, 1925, that the expression "officiating" is erroneous. Major Rahman should be called Principal of the Medical School, Agra.

CLERICAL STAFF IN CERTAIN OFFICES.

2. **Rao Sahib Abdul Hameed Khan :** Will the Government be pleased to give communalwise figures showing the strength of the clerical staff, including those working temporarily or on the waiting list, in the offices of—

- (i) Inspector-General of Police, (ii) Inspector-General of Prisons, (iii) Director of Public Instruction, (iv) Director of Industries, (v) Director of Agriculture, (vi) Excise Commissioner, (vii) Chief Conservator of Forests, (viii) Veterinary Adviser to the Government, (ix) Legal Remembrancer, (x) Board of Revenue, (xi) Deputy Chief Accounting Officer, and (xii) Board of Intermediate Education ?

Mr. G. B. Lambert : The compilation of the statistics would involve an amount of time and labour out of proportion to the value of the result which would be obtained. Government do not, therefore, propose to collect the figures.

CLERICAL STAFF IN CIVIL SECRETARIAT.

3. **Rao Sahib Abdul Hameed Khan :** Will the Government be pleased to give figures showing how many clerks of each community are working permanently, how many temporarily, and how many of them are on the waiting list in the Civil Secretariat, Allahabad ?

Mr. G. B. Lambert : The information is given below :—

Clerks in the whole Civil Secretariat.

Community.			Permanent.	Temporary.	Waiting list.
Anglo-Indians	..	..	22	2	2
Indian Christians	..	..	15	1	1
Muhammadans	..	..	22	11	17
Hindus	..	..	127	38	52
Total	..	..	186	52	72

SUPERINTENDENTS IN CIVIL SECRETARIAT.

4. **Rao Sahib Abdul Hameed Khan :** Will the Government be pleased to state how many superintendents there are in the Civil Secretariat, Allahabad, and how many of them belong to each community ?

Mr. G. B. Lambert : The information is given below :—

Superintendents in the Civil Secretariat.

Community.						Number.
Anglo-Indians	..	..	..	..	..	8
Indian Christians	..	..	..	..	..	3
Muhammadans	..	..	..	..	..	1
Hindus	..	..	..	..	..	6
Total						13

KHAN SAHIB MAULVI ABDUL QAYYUM AND HIS PAY.

5. **Rao Sahib Abdul Hameed Khan :** (a) Is it a fact that Khan Sahib Maulvi Abdul Qayyum was drawing Rs. 500 (in all) per mensem as a warden of the Agricultural College, Cawnpore ?

(b) Is it also a fact that on being made temporarily the Deputy Director of Agriculture he drew only Rs. 400 per mensem ?

(c) Will the Government be pleased to state, if the above are correct, why Khan Sahib was punished to bear a loss of Rs. 100 a month on being given charge of more responsible and arduous duties ?

(d) Does the Government intend to adopt the same procedure whenever any professor of the college is temporarily exalted to the position of a Deputy Director of Agriculture ?

(e) Is it also a fact that Khan Sahib Maulvi Abdul Qayyum has been in the department for the last twenty-two years and has always performed his duties satisfactorily ?

Kunwar Jagdish Prasad : (a) No. He drew Rs. 350 per mensem as Assistant Professor of Agriculture and Rs. 150 as warden.

(b) No. He drew his substantive pay of Rs. 350 *plus* a special pay of Rs. 200 sanctioned by the Government of India.

(c), (d) & (e). Do not arise.

DEHRA DUN-DOIWALA ROAD.

6. **Rao Sahib Abdul Hameed Khan :** (a) Is the Government aware that the Hardwar road from Dehra Dun to Doiwala belonging to the local district board is in a very bad condition ?

(b) Will the Government be pleased to ask the district board the reason why the road was not repaired and when the board intend to re-metal it ?

Sir Ivo Elliott : (a) and (b) Yes.

SAHARANPUR-RAJPUR ROAD.

7. **Rao Sahib Abdul Hameed Khan :** (a) Is it a fact that the Public Works department road from Saharanpur to Rajpur passes through Dehra Dun and Nayanagar ?

(b) Is it a fact that this road, especially at Nayanagar, has no ditches or drains on either side of it ?

(c) Is it also a fact that, during the rainy season, water accumulates on the road, damages the buildings on either side, and makes the traffic very difficult ?

(d) Does the Government intend to provide drains or ditches on either side of the road, especially at Nayanagar, in the near future ?

Mr. P. H. Tillard : (a) Yes.

(b) No. The road has a side drain on either side of it.

(c) The road is on a slope and no accumulation of water has been noticed.

(d) Disposed of under (b).

PATWARIS.

8. **Rao Sahib Abdul Hameed Khan :** (a) Is it a fact that patwaris are expected by the Government to make their own houses at the villages when they are transferred from one place to another ?

(b) Is there any provision by which the local zamindar could be induced to provide a house for the patwari ? If not, how is a patwari to get a house to live in when he goes to a new village ?

(c) Is it a fact that formerly patwaris were not so freely transferred from one place to another as they are now ?

(d) Is it in the knowledge of the Government that the patwaris are provided quarters by the Government of the Punjab ? Has the Government any such scheme under consideration ?

Mr. H. A. Lane : (a) Patwaris are required to reside within their circles. They make their own arrangements for houses. They generally do not have to build new ones.

(b) No, but in practice he often does so. The house occupied by the patwari's predecessor is generally available.

(c) Yes ; Act II of 1922, facilitated the transfer of patwaris under certain conditions.

(d) The Government have no information.

No.

POOR-HOUSES.

9. **Rao Sahib Abdul Hameed Khan :** (a) Will the Government be pleased to state what instructions did it forward to the local boards of this province in response to the resolution on poor-houses, moved by the

Hon'ble Lient. Nawab Muhammad Ahmad Sa'id Khan, M.L.C., in the Council session of 1921?

(b) To what local boards were the instructions conveyed and which boards have taken action upon them to this time?

Sir Ivo Elliott: (a) A copy of G. O. No. 294, dated January 30, 1922, is laid on the table.

(b) This letter was forwarded to all municipal boards. The Government are again addressing the board in the matter and are obtaining full information as to the poor-houses maintained or aided by the district and municipal boards.

(See Appendix E, page 200.)

MUSLIM REPRESENTATION IN TOWN AREAS.

10. **Maulvi Abdul Hakim:** Will the Government be pleased to supply the following information with regard to Muslim representation on the town areas of these provinces as found at their last elections:—

Town area.	Total number of members.	Number of Muslim members elected.

Sir Ivo Elliott: The information about the *panchayats* whose term expired in May last is given in the statement* laid on the honourable member's table.

CONSTABLES.

11. **Khan Bahadur Hafiz Hidayat Husain:** How many constables are there altogether in the police force of these provinces? How many of these are Muslims and how many are Hindus?

Mr. G. B. Lambert: There are 26,364 constables in the police force of this province, of whom 14,688 are Hindus and 11,666 are Muslims.

LAND REVENUE AND CESSSES OF UNITED PROVINCES.

12. **Khan Bahadur Hafiz Hidayat Husain:** What is the amount of land revenue and cesses paid by Hindu and Muslim zamindars respectively for the entire province (Agra and Oudh).

Mr. H. A. Lane: The honourable member is referred to the answer given to starred question No. 5 of today's date.

13. **Khan Bahadur Hafiz Hidayat Husain:** [Postponed at the re-

14. } quest of Government to the agenda of July 10, 1926.]

15. }

NOMINATION FOR NORMAL SCHOOLS FROM BALLIA.

16. **Khan Bahadur Hafiz Hidayat Husain:** How many persons were nominated for normal schools from Ballia district during the last six years? How many of these were Muslims and how many Hindus? How many of these were provided in schools after return and how many out of these got into service latter on?

Kunwar Jagdish Prasad : During the six years 1919 to 1924, thirty Hindus and six Muhammadans were deputed to a normal school, of whom twenty-five Hindus and four Muhammadans obtained certificates and were provided with posts soon after their return to the district. The teachers deputed to a normal school in 1925 will complete the course in 1927.

DEPUTY AND SUB-DEPUTY INSPECTORS OF SCHOOLS.

17. **Khan Bahadur Hafiz Hidayat Husain :** How many deputy inspectors of schools and how many sub-deputy inspectors of schools are there in the province? How many out of these are Muslims and how many are Hindus?

Kunwar Jagdish Prasad : The honourable member is referred to the answer given on March 27, 1926, to part (i) of unstarred question No. 8.

(Copy of unstarred question No. 8(i) asked on March 27, 1926, and the reply given thereto.)

QUESTION.

Will the Government be pleased to state (i) the total number of (a) inspectors of schools, (b) assistant inspectors of schools, (c) deputy inspectors of schools, (d) sub-deputy inspectors of schools, and the number of Hindus, Muslims, and Indian Christians in each class?

ANSWER.

	Total no.	Hindus.	Muham- madans.	Indian Christians.
(i) Inspectors of schools ..	8	..	2	..
Assistant inspectors ..	10	7	3	..
Deputy inspectors ..	48	41	6	1
Sub-deputy inspectors ..	195	180	64	1

18. **Khan Bahadur Hafiz Hidayat Husain :** How long has the present deputy inspector of schools been at Ballia? Is he a native of that district?

Kunwar Jagdish Prasad : Since July 1, 1905. Yes.

19. **Khan Bahadur Hafiz Hidayat Husain :** Is there no rule limiting the period of service in any one particular district for deputy inspectors of schools?

Kunwar Jagdish Prasad : No.

PASSED CANDIDATES OF GOVERNMENT NORMAL SCHOOL, LUCKNOW.

20. **Khan Bahadur Hafiz Hidayat Husain :** How many students passed out of the Government normal school, Lucknow, last time? How many out of these were Muslims and how many Hindus? How many out of these have been provided?

Kunwar Jagdish Prasad : Inquiry has been made and a reply will be given at a later date.

MUNICIPAL AND DISTRICT BOARD TEACHERS.

21. **Khan Bahadur Hafiz Hidayat Husain :** Will the Government be pleased to supply the information collected for answering unstarred question No. 15 of December 14, 1925, regarding municipal and district board teachers?

Kunwar Jagdish Prasad : Statements are laid on the table of the honourable member. The teachers in *pathshulas* are not employed by the boards.

(See Appendix F, page 204.)

SPEECHES ON EXTORTION OF MONEY.

22. **Khan Bahadur Hafiz Hidayat Husain :** With reference to my starred question No. 18, dated December 21, 1925, will the Government be pleased to state if the individual making the speech was a pleader?

Mr. G. B. Lambert : Yes.

23. **Khan Bahadur Hafiz Hidayat Husain :** [*Withdrawn by the honourable member.*]

PHAPHUND-AURAIYA RAILWAY LINE.

24. **Khan Bahadur Hafiz Hidayat Husain :** Have the Government received the opinion of the Board of Communications regarding the opening of a railway from Phaphund to Auraiya in the Etawah district? What have the Government decided?

Mr. P. H. Tillard : Yes. The Government have included the line in their programme of railway construction which has been forwarded to the Government of India for the preparation of estimates of traffic returns.

25. **Khan Bahadur Hafiz Hidayat Husain :** [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

NUMBER OF SCHOLARS IN DISTRICT BOARD SCHOOLS.

26. **Khan Bahadur Hafiz Hidayat Husain :** Will the Government be pleased to place a statement on the table, compiled districtwise showing—

- (i) total number of scholars in all district board schools including aided institutions;
- (ii) number of Hindus;
- (iii) number of Muslims;
- (iv) number of depressed classes;
- (v) number of other communities?

Kunwar Jagdish Prasad : The honourable member is referred to general tables IVA and IVB appended to the general report on public instruction. A statement showing the number of Hindu and Muhammadan scholars in each district on March 31, 1925, in the schools maintained and aided by district boards is placed on the table of the honourable member. Figures showing the number of depressed classes and other communities districtwise are not available, and their collection would involve an amount of clerical labour incommensurate with their value.

(See Appendix G, page 208.)

STARRED QUESTIONS.*(Listed for June 30, 1926.)***GOVERNMENT SERVANTS.**

*1. **Khan Bahadur Hafiz Hidayat Husain**: Are Government servants in these provinces allowed to accept presidencies or other similar posts involving executive control of private institutions meant for the benefit of one particular community or section of the community? If so, will the Government be pleased to enumerate those institutions or describe their character generally?

Hon'ble Sir Sam O'Donnell: It is not clear to what institutions the honourable member refers. The general rule is that a Government servant is not allowed to undertake employment other than his public duties. A Government official is also forbidden to take part in advocating or organizing a society which sets one class of the community against another class or in propagating the tenets of such a society, nor is he allowed to serve on the committee of a religious trust. He is, however, allowed to serve on the committee of a trust vested in the Treasurer of Charitable Endowments. No list of cases in which permission has been given is maintained.

TEACHERS TO STUDY WESTERN METHODS.

*2. **Khan Bahadur Hafiz Hidayat Husain**: Do Government propose to send teachers abroad to study Western methods of teaching with a view to improve the quantity of teaching in our schools?

If so, from what schools is it intended to send teachers?

What will be the qualifications of such teachers?

What will be the probable expenditure per teacher and will all the expenses be borne by the Government or only a portion?

Hon'ble Rai Rajeshwar Bali: The honourable member is referred to notification No. 28 G/XV—207, dated January 8, 1926, a copy of which is placed on his table.

*(See Appendix H, page 209.)***SCHOOLS ON THE MODEL OF ENGLISH PUBLIC SCHOOLS.**

*3. **Khan Bahadur Hafiz Hidayat Husain**: Do Government propose to establish schools in these provinces on the model of English public schools? If so, when is the first school likely to be established?

Hon'ble Rai Rajeshwar Bali: The matter is being examined.

STANDARD OF EXAMINATIONS CONDUCTED BY VARIOUS INTERMEDIATE BOARDS.

*4. **Khan Bahadur Hafiz Hidayat Husain**: Are Government aware of the great disparity in the standard of examinations conducted by the various intermediate boards of these provinces?

Will the Government be pleased to try to effect co ordination between the various boards in order to secure uniformity of standard?

Hon'ble Rai Rajeshwar Bali: The reply to the first part of the question is in the affirmative. As regards the second part, the matter is being examined.

*5. **Khan Bahadur Hafiz Hidayat Hussain** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

ISLAMIA TRAINING CLASSES.

*6. **Khan Bahadur Hafiz Hidayat Hussain** : Will the Government be pleased to state how many Islamia training classes are there in these provinces and the places where they are located ? What is the average population of these schools ?

Hon'ble Rai Rajeshwar Bali : There are two Islamia training classes ; one located at Khalepar, Saharanpur, and the other at Unwal in Gorakhpur district. The average attendance at these classes is eight and six respectively.

ANNUAL REPORTS OF LOCAL BODIES.

*7. **Khan Bahadur Hafiz Hidayat Hussain** : Are annual reports submitted by the local bodies supposed to be the reports of the chairmen alone or of the boards ? If the latter, are Government aware that some chairmen do not place them in the meetings of the boards at all and if they do place them the suggestions of members for incorporation in the reports are not heeded ?

Hon'ble Nawab Muhammad Yusuf : The reports are the reports of the boards. The Government have no information on the latter point.

INSTRUCTIONAL ESTATE ATTACHED TO AGRICULTURAL COLLEGE, CAWNPORE.

*8. **Khan Bahadur Hafiz Hidayat Hussain** : (i) What is the area of the instructional estate attached to the Agricultural College, Cawnpore ?

(ii) What is the total cost of its acquisition ?

(iii) How much money has been invested in it for improvements ?

(iv) What is the loss per year of this instructional estate ?

(v) What is the reason of this loss ?

(vi) Who is in immediate charge of this farm ? How many years' service has he put in and what is his salary ?

(vii) Do the Government consider him competent and experienced enough to be put in charge of this farm ?

Hon'ble Thakur Rajendra Singh : (i) Three hundred and eighty-one acres.

(ii) Rupees 2,44,638.

(iii) Rupees 11,793.

(iv) The net expenditure per annum is as follows :—

							Rs.
1922-23	..	..	..	..	..	..	5,173
1923-24	..	..	..	..	..	..	6,250
1924-25	..	..	..	..	..	..	17,484

(v) The college maintains the farm for purposes of instruction and not for profit. The expenses are due to the following reasons, among others :—

(a) the conversion of rough, uneven areas into culturable land,

(b) the production of fodder crops for the instructional dairy,

(c) the undertaking of unproductive work for instructional purposes.

(vi) Babu Pyarey Lal Garg of the United Provinces Agricultural Service. He has served for over ten years and is drawing Rs. 300 per mensem in the scale of Rs. 250—25—750.

(vii) Government are considering the advisability of a change.

*9 and *10. **Khan Bahadur Hafis Hidayat Hussain**: [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

*11 to *23. **Dr. Shafa'at Ahmad Khan**: [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

COMMITTEE ON THE REGISTRATION OF MUSLIM MARRIAGES.

*24. **Dr. Shafa'at Ahmad Khan**: Will the Government be pleased to state why such an unusual delay has occurred in the announcement of the personnel of the committee on the registration of Muslim marriages?

Hon'ble Nawab Muhammad Yusuf: The delay in announcement is due to the delay on the part of some of the persons proposed for membership in signifying their acceptance.

*25. **Dr. Shafa'at Ahmad Khan**: Will the Government be pleased to state if any meeting of the committee has been held so far?

Hon'ble Nawab Muhammad Yusuf: No meeting has been held.

RECOMMENDATIONS OF SUPER-CO-ORDINATION COMMITTEE.

*26. **Dr. Shafa'at Ahmad Khan**: Will the Government be pleased to lay on the table copies of resolutions passed by the Muslim University, Aligarh, Allahabad University, Hindu University, Benares, and Lucknow University, on the recommendations of the Super-co-ordination Committee?

Hon'ble Rai Rajeshwar Bali: Only the Allahabad University and the Benares Hindu University have so far expressed an opinion on the recommendations of the conference of vice-chancellors.

*27. **Dr. Shafa'at Ahmad Khan**: When do the Government intend to give effect to the recommendation of the committee?

Hon'ble Rai Rajeshwar Bali: Until replies have been received from all the universities the question will not arise.

*28. **Dr. Shafa'at Ahmad Khan**: Was that committee appointed by the Government or by the Minister acting in his individual capacity?

Hon'ble Rai Rajeshwar Bali: The Government.

ALIENATION OF LANDED PROPERTY.

*29. **Dr. Shafa'at Ahmad Khan**: Will the Government be pleased to lay on the table all the data they have collected so far regarding the alienation of landed property in these provinces, to which a reference was made in the speech of the Hon'ble the Finance Member, on the resolution relating to the Land Alienation Act?

Hon'ble Sir Sam O'Donnell: As the reports of only four district officers have so far been received, Government do not consider that any useful purpose would be served by laying them on the table. Reliable

conclusions can be drawn only after examination of reports from all districts.

LOAN FOR THE CONSTRUCTION AND REPAIRS OF ROADS IN MORADABAD DISTRICT.

***30. Dr. Shafa'at Ahmad Khan :** Did the district board, Moradabad, apply to the Government for a loan for the construction and repair of roads in the district?

Hon'ble Nawab Muhammad Yusuf : The district board applied for a loan to meet its outstanding liabilities.

***31. Dr. Shafa'at Ahmad Khan :** When was the application received, and what action has been taken on it?

Hon'ble Nawab Muhammad Yusuf : The application was received on October 24, 1924, and the board was informed that the loan could not legally be made for the purpose for which it was asked.

***32. Dr. Shafa'at Ahmad Khan :** Will the Government be pleased to state if any other board has applied to the Government for a loan? If so, will the Government be pleased to lay a statement on the table showing the date of application, amount of loan desired and the orders of the Government thereon?

Hon'ble Nawab Muhammad Yusuf : No application for loan has been received from any other board since April 1, 1925. The second part of the question does not arise.

KASHIPUR-KALAGARH RAILWAY.

***33. Dr. Shafa'at Ahmad Khan :** Will the Government be pleased to state if a sub-committee of the Board of Communications approved of the construction of the Kashipur-Kalagarh Railway?

Hon'ble Sir Sam O'Donnell : Yes.

***34. Dr. Shafa'at Ahmad Khan :** (a) Will the Government be pleased to state if they have accepted the recommendations of the sub-committee?

(b) If not, why not?

Hon'ble Sir Sam O'Donnell : (a) Yes.

(b) Does not arise.

***35. Dr. Shafa'at Ahmad Khan :** When did the preparation for the construction of the Kashipur-Kalagarh Railway line start?

Hon'ble Sir Sam O'Donnell : Construction has not begun.

THAKURDWARA TAHSIL, MORADABAD.

***36. Dr. Shafa'at Ahmad Khan :** (a) Will the Government be pleased to state if they have at last decided to maintain the Thakurdwara tahsil in Moradabad?

(b) If not, will the Government be pleased to state how long this suspense and anxiety will continue?

Hon'ble Sir Sam O'Donnell : (a) It has been decided not to abolish Thakurdwara tahsil.

(b) Does not arise.

*37. **Dr. Shafa'at Ahmad Khan** : Is the Government aware that this delay has seriously affected the prosperity of the tahsil ?

Hon'ble Sir Sam O'Donnell : No.

MUSLIM GRAVEYARDS IN VILLAGES.

*38. **Dr. Shafa'at Ahmad Khan** : Has the attention of the Government been drawn to the necessity of preserving the Muslim graveyards in the villages ?

Hon'ble Sir Sam O'Donnell : No.

*39. **Dr. Shafa'at Ahmad Khan** : Is the Government aware that in some place in the Amroha tahsil Muslim graveyards have been dug up and ploughed ?

Hon'ble Sir Sam O'Donnell : No.

*40. **Dr. Shafa'at Ahmad Khan** : Will the Government be pleased to make an inquiry in each district and to place the report of such an inquiry on the table of the Council ?

*41. Do the Government intend impressing the district authorities with the need of preserving such places, and not allowing them to be ploughed ?

Hon'ble Sir Sam O'Donnell : No. There could be no results commensurate with the labour involved in the elaborate inquiry which is suggested. Village graveyards are under the protection of the ordinary law. In the great majority of cases there is no dispute. Where disputes exist it is for the parties to settle their differences by recourse to the courts. The causes of dispute vary considerably and each case must be settled on its own merits. In some instances the Indian Penal Code or the Code of Criminal Procedure would be applicable, whilst in other instances application would have to be made under the Tenancy Act or to the civil courts.

*42. **Dr. Shafa'at Ahmad Khan** : Is it a fact that in several villages near thana Didauli in Amroha tahsil in Moradabad, such graveyards have been converted into grazing ground, and have been, in some cases, ploughed ?

Hon'ble Sir Sam O'Donnell : The Government have no information but if the facts are as alleged, the remedy lies in the courts.

ROADS IN MORADABAD.

*43. **Dr. Shafa'at Ahmad Khan** : Has the attention of the Government been drawn to the state of pucca roads in the Moradabad district ?

Hon'ble Nawab Muhammad Yusuf : No.

RAJHERA BRIDGE IN MORADABAD.

*44. **Dr. Shafa'at Ahmad Khan** : Has the attention of the Government been drawn to the state of the bridge at Rajhera in the Moradabad district ? Why has a pucca bridge not yet been built ?

Hon'ble Nawab Muhammad Yusuf : (a) Yes.

(b) Estimate under preparation.

*45. **Dr. Shafa'at Ahmad Khan**: Is it a fact that a number of persons have been drowned, and a very large number of cattle have been lost, through the lack of a pucca bridge?

Hon'ble Nawab Muhammad Yusuf: No accidents have been reported to Government.

SHAUKAT USMANI OF CAWNPORE.

*46. **Khan Bahadur Hafiz Hidayat Husain**: Where is Shaukat Usmani of the Cawnpore communist case incarcerated now? What is the state of his health? What work is allotted to him in prison? Has his weight increased since January last?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: Shaukat Usmani is in the Dehra Dun district jail; his health is good; his work stamping tickets; his weight was 100 lb. both on January 1 and on June 1.

Dr. Shafa'at Ahmad Khan: Has it increased since?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: His weight was exactly the same on both the dates.

Pandit Nanak Chand: What was his weight at the time of his first admission to the jail?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: That I do not remember.

ISLAMIA SCHOOLS AND MAK TABS AT NAINI TAL.

*47. **Khan Bahadur Hafiz Hidayat Husain**: How many Islamia schools and *maktabs* are there within the municipal area of Naini Tal? Are these open throughout the year? Does the Department of Public Instruction intend opening Islamia schools in Naini Tal for the season only?

Hon'ble Rai Rajeshwar Bali: There are no Islamia schools or *maktabs* within the municipal area of Naini Tal. The second part of the question does not therefore arise. The answer to the third part of the question is in the negative; the responsibility for the provision of vernacular education within the municipal area of Naini Tal rests on the municipal board and the matter is one for the board to decide.

GRANT FOR VERNACULAR LITERATURE.

*48. **Khan Bahadur Hafiz Hidayat Husain**: What is the sanctioned allotment for the growth of vernacular literature during the present financial year? How has this money been allotted? How much for Hindi and how much for Urdu? To which individual or society has the money been given, in what amount and for what particular purpose?

Hon'ble Rai Rajeshwar Bali: Rupees 25,000. Proposals for utilizing the money are under the consideration of Government.

MUNSARIM OF JUDGESHIP, ALIGARH.

*49. **Mr. Muhammad Aslam Saifi**: (a) Is it a fact that the munsarim of Aligarh judgeship is over 55 years of age and has put in nearly 40 years' service?

(b) Is it also a fact that his own son is employed as munsarim of a munsifi at headquarters?

(c) Is it also a fact that several other relatives of his are employed in the same judgeship?

(d) Do the Government, in view of certain Government orders, intend to retire him, and, if so, when?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : (a) Yes.

(b) Yes.

(c) Two persons distantly connected with him by marriage are employed in the judgeship.

(d) Under the rules it is within the discretion of the district judge either to retire him or to retain him in service until he attains the age of 60. Government propose to address the district judge in the matter.

*50 to *54. **Mr. Zahur Ahmad :** [*Postponed at the request of Government to the agenda of July 10, 1926.*]

SUB-TREASURY TAHVILDARS.

Dr. Shafa'at Ahmad Khan : In the absence of Mr. Zahur Ahmad I wish to put the questions.

*55. **Mr. Zahur Ahmad :** Will the Government be pleased to state whether the posts of sub-treasury tahvildars are pensionable? If not, why they are not treated in the same way as the posts of treasurers of head treasuries and the High Court?

*56. Will the Government be pleased to state whether the Fundamental Rules are applied to the sub-treasury tahvildars? If so, why this privilege of pension is not granted to them also?

Hon'ble Sir Sam O'Donnell : The position of tahvildars is in many respects anomalous and Government have the matter under their consideration. They would prefer at present to make no pronouncement on the subject, but will do so in the next session of the Council if the question is repeated.

Hon'ble the President : There was no meaning in putting this question when no supplementary question was to be asked.

*57. **Khan Bahadur Hafiz Hidayat Hussain :** [*Postponed at the request of Government to the agenda of July 10, 1926.*]

PURCHASE OF NEWSPAPERS.

*58. **Khan Bahadur Hafiz Hidayat Hussain :** Do the Government purchase the *Oudh Akhbar* of Lucknow? If so, how many copies daily or weekly? To whom are these papers sent and with what object? What do the Government pay for the same?

Do the Government take any other paper likewise? If so, what are the names of those papers and what is the number of copies taken of each paper? To whom do the Government send these papers and with what object? How much do the Government pay for these papers?

Hon'ble Sir Sam O'Donnell : The Government purchase 102 copies of the *Oudh Akhbar* weekly and distribute them to deputy commissioners in Oudh. The cost is Rs. 714 a year. They also take 50 copies of the

Zulgarnain, Budaun, and 100 copies of the *Mushrig*, Gorakhpur, at an annual cost of Rs. 250 and Rs. 600, respectively. These papers are distributed by the commissioners of the divisions concerned. The custom of taking copies of these papers has continued for a number of years, and it has been found that the practice helps to keep district officers in touch with the local press. Consequently the Government have not discontinued their subscription: they have, however, decided not to subscribe to any fresh papers.

**EMBEZZLEMENT IN CANAL DEPARTMENT, GANGES CANAL,
ROORKEE DIVISION.**

*59. **Khan Bahadur Mr. Ashiq Husain Mirza**: Will the Government be pleased to state how and how much public money was embezzled or lost through the carelessness of the officers of the Canal department, Ganges canal, Roorkee division?

Hon'ble Sir Sam O'Donnell: Certain sums were lost to Government by over-payment on account of over-measurement or excessive rates. It is impossible to calculate what the proper payments should have been.

*60. **Khan Bahadur Mr. Ashiq Husain Mirza**: For how long did this state of affairs last? When was it discovered and by whom?

Hon'ble Sir Sam O'Donnell: The over-payments were made at various dates within a period of less than one year. They were brought to light by the Superintending Engineer, I circle, Irrigation works, early this year, after which investigations were made.

*61. **Khan Bahadur Mr. Ashiq Husain Mirza**: What action was taken by Government?

Hon'ble Sir Sam O'Donnell: Officials concerned were dismissed on the dates put opposite their names:—

- | | |
|--|---------------------|
| (1) Mr. Jwala Prasad, Assistant Engineer | ... March 23, 1926. |
| (2) Babu Pearey Lal Gupta, Subordinate
Engineering Service. | ... April 19, 1926. |
| (3) Babu Mahabir Prasad, Subordinate
Engineering Service. | April 10, 1926. |

*62. **Khan Bahadur Mr. Ashiq Husain Mirza**: What officers and how many were dismissed and what efforts were made to recover the money?

Hon'ble Sir Sam O'Donnell: The honourable member is referred to the answers to questions Nos. 60 and 61. The money could not be recovered.

*63. **Khan Bahadur Mr. Ashiq Husain Mirza**: Why were these dismissed officers not prosecuted in a court of law if they were guilty?

Hon'ble Sir Sam O'Donnell: The action taken was considered to be suitable.

UNSTARRED QUESTIONS.

SUBORDINATE STAFF OF AGRICULTURAL DEPARTMENT.

1. **Khan Bahadur Hafiz Hidayat Husain**: How many persons have been taken in the subordinate staff of the Agricultural department during

the last three years? How many out of these are Muslims and how many Hindus? Will the Government be pleased to supply a statement showing the number taken every year beginning from 1923 and state how many Muslims and how many Hindus were taken each year?

Kunwar Jagdish Prasad: A statement is laid on the table of the honourable member.

(See Appendix I, page 212.)

MORTGAGED PROPERTY.

2. **Dr. Shafa'at Ahmad Khan:** Will the Government be pleased to supply the following information in the tabulated form below:—

A	B	C	D	E
Amount of mortgaged property (1) movable, (2) immovable in each district of these provinces.	The amount of such mortgaged property belonging to (a) Muslims, (b) Hindus and (c) Christians in each district of these provinces.	The number of mortgagors of such property, and their religion.	The number of mortgagees and their religion.	For what amount has the property been mortgaged.

Mr. H. A. Lane: The Government do not possess the information and are unable to supply it.

PROVINCIAL SUBORDINATE AND CLERICAL SERVICES IN CERTAIN DEPARTMENTS.

3. **Dr. Shafa'at Ahmad Khan:** Will the Government be pleased to lay a statement on the table showing the number of (i) Hindus and (ii) Muslims in the (1) imperial, (2) provincial, (3) subordinate and (4) clerical services of the following departments of Government:—

- (1) Forest department,
- (2) Irrigation department,
- (3) Education department,
- (4) Public Health department,
- (5) Secretariat, and
- (6) Judicial department?

Hon'ble Sir Sam O'Donnell: For the all-India and provincial services the honourable member is referred to the Civil List. For other services the compilation of the statistics would involve an amount of time and labour out of proportion to the value of the result which would be obtained; Government do not therefore propose to collect the figures.

MUSLIM DEPUTY OR ASSISTANT SUPERINTENDENT OF POLICE, MORADABAD.

4. **Dr. Shafa'at Ahmad Khan:** Will the Government be pleased to state why no Muslim has been appointed to the post of kotwal, deputy superintendent or assistant superintendent of police in Moradabad?

Mr. G. B. Lambert: There is a Muslim assistant superintendent of police at Moradabad.

5. **Dr. Shafa'at Ahmad Khan :** Do the Government intend appointing a Muslim in the near future?

Mr. G. B. Lambert : Does not arise.

GRANTS TO INSTITUTIONS.

6. **Dr. Shafa'at Ahmad Khan :** (a) Will the Government be pleased to lay on the table a list of all institutions that received a grant from the Education department, last year?

(b) What was the amount received by each?

(c) Who is the secretary of each of these institutions?

Kunwar Jagdish Prasad : Government regret that they are unable to supply the information required by the honourable member, as its collection would involve an amount of labour and detailed inquiry which would not be commensurate with its value.

MUSLIM SCHOLARS IN MUNICIPAL SCHOOLS.

7. **Dr. Shafa'at Ahmad Khan :** With reference to my previous questions, will the Government be pleased to lay on the table a statement showing the number of Muslim scholars in schools maintained by each municipal board of these provinces?

Kunwar Jagdish Prasad : Figures in the form asked for by the honourable member are being collected.

CONSTITUTION OF CAWNPORE MUNICIPALITY.

8. **Khan Bahadur Hafiz Hidayat Husain :** What is the constitution of the Cawnpore municipal board? How many voters are there altogether? How many out of these voters are Hindus and how many are Muslims? How many members are returned to the municipal board by the Hindu voters and how many by the Muslim voters?

How many members are returned from the United Provinces Chamber of Commerce and how many by the Marwaris?

Are these special constituency members in addition to the Hindu members from the general constituency of non-Muslims?

Sir Ivo Elliott : The Cawnpore municipal board consists of 36 members of whom ten are elected by Muslims, seventeen by non-Muslims and two by non-Muslim Marwaris; three members are nominated by the Upper India Chamber of Commerce, two by the United Provinces Chamber of Commerce and two by Government. There are 35,061 voters of whom 10,667 are Muslims. Separate figures for Hindu voters are not available nor are members returned exclusively by Hindu voters.

9. **Babu Parsidh Narayan Anad :** [*Withdrawn by the honourable member.*]

10. **Babu Parsidh Narayan Anad :** [*Withdrawn by the honourable member.*]

ID-UZ-ZUHA HOLIDAY.

11. **Mr. Muhammad Aslam Saifi :** Is the Government aware that a resolution was passed unanimously by the Council to fix three days as holidays for *Id-uz-Zuha*?

Mr. G. B. Lambert : The Council passed a resolution to this effect, but not unanimously.

12. **Mr. Muhammad Aslam Saifi :** (a) Have the Government issued orders to this effect ?

(b) If not, will the Government be pleased to state why no orders on the subject have been issued ?

Mr. G. B. Lambert : (a) No.

(b) The Government considered the question, but decided to take no action for the reasons given in the course of the debate.

COPYISTS IN CIVIL COURTS.

13. **Mr. Muhammad Aslam Saifi :** Have the Government issued any orders with regard to making the post of the copyist in civil courts pensionable ?

Mr. R. L. Yorke : Yes.

14. **Mr. Muhammad Aslam Saifi :** Will the Government be pleased to place a copy of the order on the table ?

Mr. R. L. Yorke : A copy of the Government order is placed on the table.

(See Appendix J, page 212.)

15 to 19. **Mr. Muhammad Aslam Saifi :** [Postponed at the request of Government till the first day of the meeting after the Muharram holidays.]

MUSLIM OFFICERS IN KUMAUN.

20. **Khan Bahadur Hafiz Hidayat Husain :** How many Muslim deputy collectors, tahsildars, naib-tahsildars and inspectors and sub-inspectors of police are posted in the Kumaun division ? What is the total number of deputy collectors, tahsildars, naib-tahsildars and inspectors and sub-inspectors of police serving in the Kumaun division ? Is there any bar to Muslim officers being posted to Kumaun ?

Mr. G. B. Lambert :

Muslim deputy collectors, tahsildars, etc., posted in the Kumaun division.

(1) Deputy collectors	...	...	3 (one is on leave).
(2) Tahsildar	...	...	1
(3) Naib-tahsildars	...	...	...
(4) Inspectors of police	...	...	...
(5) Sub-Inspectors of police	...	...	5

Total number of deputy collectors, etc., serving in the Kumaun division.

Deputy collectors	...	...	14
Tahsildars	...	...	8
Naib-tahsildars	...	...	12
Inspectors of police	...	...	4
Sub-Inspectors of police	...	...	31
There is no bar to Muslim officers being posted to Kumaun.			

} Excluding special
dacoity police.

NAGRI PRACHARNI SABHA, BALLIA.

21. **Khan Bahadur Hafiz Hidayat Husain** : Did any meeting of the Nagri Pracharni Sabha take place at Ballia in the beginning of May last ? Who presided over that meeting ? Have the Government seen the resolutions passed at the meeting ?

Mr. G. B. Lambert : The Government have no information and have seen no resolution.

PURCHASE OF FIREARMS BY MUSLIM RESIDENTS OF BALLIA.

22. **Khan Bahadur Hafiz Hidayat Husain** : Was any inquiry made lately in the Ballia district regarding the purchase of firearms and cartridges by the Muslim residents of the district ? If so, why was this done ? Was the report on which the inquiry was made found false ? How was the person making the report dealt with ?

Mr. G. B. Lambert : The stock registers of licensed dealers were examined in order to compile a return, asked for by the Government. The inquiry was not confined to the Ballia district, nor to Muslims.

TOWN HALL, ORAI, JALAUN.

23. **Khan Bahadur Hafiz Hidayat Husain** : Is it in contemplation to build a town hall at Orai in the Jalaun district ? What is the estimated cost of the building ? Who is collecting subscriptions ? What part, if any, do the revenue officers of the district take in the collection of subscriptions ? How much money has been realized and what is the amount subscribed in 1926 ?

Sir Ivo Elliott : An answer will be given at a later date.

HONORARY MAGISTRATES IN JALAUN.

24. **Khan Bahadur Hafiz Hidayat Husain** : How many honorary magistrates and honorary assistant collectors are there in the Jalaun district ? How many out of these are Muslims ?

Mr. R. L. Yorke : There are sixteen honorary magistrates. There is no honorary assistant collector. One honorary magistrate is a Muslim.

25. **Khan Bahadur Hafiz Hidayat Husain** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

ARMS LICENSEES IN JALAUN.

26. **Khan Bahadur Hafiz Hidayat Husain** : How many arms licences are there altogether in the Jalaun district ? How many out of these are Muslims ? How many arm licences have been issued since January, 1925 ?

Mr. G. B. Lambert : There are 976 licensees in Jalaun of whom 71 are Muslims. Since January, 1925, 260 licences have been issued.

MUSLIM GAZETTED OFFICER IN BETWA CANAL DIVISION.

27. **Khan Bahadur Hafiz Hidayat Husain** : Is there any Muslim gazetted officer attached to the Betwa canal division now ? If so, what is his name ?

Hon'ble Sir Sam O'Donnell: (i) No.

(ii) Does not arise.

28 and 29. **Khan Bahadur Hafiz Hidayat Husain:** [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

STARRED QUESTIONS.

(Listed for July 1, 1926.)

*1 to *42. **Mr. Zahur Ahmad:** [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

HONORARY AND SPECIAL MAGISTRATES.

*43. **Mr. Zahur Ahmad:** Has the Government issued instructions to the district authorities not to nominate such persons for the office of honorary and special magistrate who do not know a word of English?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: No.

*44. **Mr. Zahur Ahmad:** Will the Government be pleased to state if they approve the appointment of a defeated candidate in the district board election who also does not know a word of English as the honorary and special magistrate in the same area in which he fought election and was defeated.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: Government see no connexion between a gentleman's defeat in an election and his fitness for the bench. A knowledge of English is not an essential qualification for appointment as honorary magistrate.

*45. **Mr. Zahur Ahmad:** Will the Government be pleased to issue instructions to the district authorities not to appoint as honorary magistrate a defeated candidate in the district board election and who does not know a word of English in the area in which he was defeated as a candidate of the membership of the district board in the last election?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: No. Honorary magistrates are appointed by Government and not by district authorities.

ID UZ ZUHA HOLIDAY.

*46. **Mr. Zahur Ahmad:** What action has been taken in connexion with the recommendation of the Council to grant three days' holiday instead of one for *Id-uz-Zuha*?

*47. Will the Government be so good as to issue very early orders if no action has yet been taken?

Hon'ble Sir Sam O'Donnell: The honourable member is referred to the answers given to unstarred questions Nos. 11 and 12 for June 30.

(Copies of unstarred questions Nos. 11 and 12 of June 30, 1926, and of answers given thereto.)

QUESTION.

11. Is the Government aware that a resolution was passed unanimously by the Council to fix three days as holidays for *Id-uz-Zuha*?

ANSWER.

The Council passed a resolution to this effect, but not unanimously.

QUESTION.

12. (a) Have the Government issued orders to this effect ?
(b) If not, will the Government be pleased to state why no orders on the subject have been issued ?

ANSWER.

- (a) No.
(b) The Government considered the question but decided to take no action for the reasons given in the course of the debate.

* 48. **Mr. Zahur Ahmad** : Will the Government kindly state if three days' holiday was granted to the Muslim clerks of the Civil Secretariat ? If not, why not ?

Hon'ble Sir Sam O'Donnell : No. For the reasons already given.

* 49. **Mr. Zahur Ahmad** : Did the Muslim clerks of the Secretariat apply for leave ? If so, what action was taken ?

Hon'ble Sir Sam O'Donnell : No.

KINDERGARTEN SCHOOLS.

* 50. **Mr. H. C. Desanges** : Is the Government aware that there are very few, if any, kindergarten schools for Indian children in the province ?

Hon'ble Rai Rajeshwar Bali : If by kindergarten schools the honourable member means infant schools in which children receive individual attention and in which systematically arranged amusements are combined with instruction, the answer is in the affirmative.

* 51. **Mr. H. C. Desanges** : Is Government aware that it is proposed to start a kindergarten school for Indian children in Allahabad ?

Hon'ble Rai Rajeshwar Bali : Government are aware that a proposal of the kind has been made, but it is somewhat vague.

* 52. **Mr. H. C. Desanges** : Is it a fact that the Inspector of Schools of the Allahabad division has been approached with a view to securing the sympathy and approval of the Department of Public Instruction for the proposed school ?

Hon'ble Rai Rajeshwar Bali : Yes.

* 53. **Mr. H. C. Desanges** : Will the Government consider the advisability of allowing it a liberal grant ?

Hon'ble Rai Rajeshwar Bali : If a definite proposal is received it will be examined.

FOREIGN LIQUOR SHOPS AT NAINI TAL.

* 54. **Pandit Brijnandan Prasad Misra** : (a) Will the Government inform the Council how many foreign liquor shops are at present existing in Naini Tal ?

(b) Does the Government contemplate to grant any new licence in addition to the present number ; and, if so, for what reasons ?

Hon'ble Thakur Rajendra Singh : (a) Seven.

(b) Government have no such intention at present.

EXAMINATION OF ACCOUNTANCY.

* 55. **Mr. Muhammad Aslam Saifi** : Will the Government be pleased to state if any Hindu has been preferred to a better qualified Muhammadan for the Examination of Accountancy? If so, why?

Hon'ble Sir Sam O'Donnell : Government do not know what examination the honourable member means.

* 56 to 62. **Rai Bahadur Babu Ram Nath Bhargava** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

UNSTARRED QUESTIONS.

REMISSIONS AND SUSPENSIONS OF REVENUE IN HARDOI DISTRICT.

1. **Rai Bahadur Thakur Mashal Singh** : Will the Government be pleased to state if it is a fact that considerable damage was done by floods to the last *kharif* crop and very poor *rabi* was harvested in the flood-stricken areas of the Hardoi district?

Mr. H. A. Lane : Considerable damage was done to the *kharif* of 1333 *fasli* in the Hardoi district. The *rabi* crop in the flooded areas was not good.

2. **Rai Bahadur Thakur Mashal Singh** : Is it a fact that the parganas of Sandi, Katiyari, Kachhandan, and Mallawan in the Bilgram tahsil and pargana Barwan in the Hardoi district were very badly hit by the successive floods for the last two years?

Mr. H. A. Lane : These parganas have suffered considerably owing to the floods of the last two years.

3. **Rai Bahadur Thakur Mashal Singh** : Will the Government be pleased to state the remissions and suspensions of land revenue and *tagavi* made in the tracts mentioned in the previous question?

Mr. H. A. Lane : Rupees 35,729 land revenue was remitted in the Hardoi district owing to the partial failure of the *kharif* of 1333 *fasli*; Rs. 3,109 of the *kharif* land revenue, and Rs. 42,494 *tagavi* demand was suspended.

4 to 9. **Rai Bahadur Thakur Mashal Singh** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

DISTRICT OFFICER, HARDOI.

10. **Rai Bahadur Thakur Mashal Singh** : Will the Government be pleased to state the reason why frequent changes are made in the personnel of the District Officer of Hardoi?

Mr. G. B. Lambert : Such changes as are made are due to the exigencies of the public service.

THE AGRA TENANCY BILL.

Question, that the Agra Tenancy Bill as reported by the select committee be taken into consideration, put and agreed to.

Raja Shambhu Dayal :

جناب پریسیڈنٹ صاحب — میں حضور کی اجازت سے ایک خاص معاملہ کی طرف توجہ دلانا چاہتا ہوں۔ معاف کیجئے ذرا دم لے لوں (قہقہہ) — میں خیال کرتا ہوں۔

Hon'ble the President پہلے آپ اپنی تحریک فرمائیے۔
Raja Shambhu Dayal Saheb میری تحریک یہ ہے کہ کیا اس کونسل چیئرمین کے متعلق Sanitary Commissioner سینٹری کمشنر صاحب کی راہ لے لی گئی ہے کہ آیا اس میں صحت کے لیئے کافی ہوا پہنچ سکتی ہے تاکہ ہم اطمینان سے اپنا کام ختم کرسکیں یا کسی کا یہاں پر دم گھٹ جائیگا اور مر جائیگے (قہقہہ) —

Hon'ble the President — تشریف رکھیے پہلے نوٹس دیجئے پھر آنریبل فائیننس میمبر صاحب تحقیقات کریں گے۔ اطمینان رکھیے — صحت میں کوئی فرق نہیں آئیگا۔ • (قہقہہ)

Hon'ble the President : According to the usual practice the preamble and short title will be taken in the end. We begin with clause 2. Honourable members will notice that up to date there are no less than 682 amendments on the notice paper covering about 54 foolscap printed pages. And as is generally the case, I shall call the number of the clause which is to be taken into consideration ; honourable members who have amendments to propose must get up promptly and propose their amendments. Amendments, honourable members will notice, have been printed in alphabetical order in the names of the honourable members themselves, so that whenever a clause is read or a particular line of a clause is read, an honourable member who has an amendment on the notice paper or who is keen to move it should get up at once and move it. Honourable members should be aware of the fact that when we reach the latter portion of the clause and if there are any amendments regarding the earlier portion of that clause and the amendment regarding the earlier portion of that clause is not moved, the member is too late as regards the portion that we have passed and he cannot move it. Therefore in spite of the discomfort of this room I hope honourable members will stand up promptly and move their amendments at the proper place. The question has been asked of me privately by various honourable members as to the time within which notices for amendments should be given. Honourable members know that according to standing order 54 it should be two clear days notice given to the Secretary in writing before the date of the meeting on which a Bill is to be considered, so that technically and strictly speaking notices of amendments given up to the 26th only are in order ; but, as was the practice of my predecessor-in-office as regards the Oudh Rent Bill, I propose to follow the same practice here, viz., to take amendments with regard to a special clause two days previous to the date on which that clause comes up for discussion, for example, a clause comes up for discussion on July 4, amendments regarding that particular clause will be in order up to 11 a.m. of July 2. Other amendments of course will have to be disregarded unless the House wants to take them up. I might say in this connexion that the Chair will be very chary in suspending standing orders in connexion with a Bill of this complex and contentious nature. And it

is on account of these considerations that I am relaxing that rule and following a practice which should not, however, be taken as a precedent for other Bills to come.

Khan Bahadur Shaikh Masud-uz-Zaman : I would suggest that the groups of different sections may be formed so that they may be taken in the discussion together. The result of one section for instance depends on the result of the other sections, and there are certain sections which govern each other and I think they should be taken together.

Hon'ble the President : The honourable member's suggestion is extremely difficult to follow. I hope, however, things will be clear to the honourable member as we proceed.

CLAUSE 2.

Clause 2 ordered to stand part of the Bill.

Pandit Nanak Ohand : I would request, Sir, that the sub-clauses also may be called out by yourself because members might find it difficult to know which amendment is to come first.

Hon'ble the President : Very well.

CLAUSE 3.

3. In this Act, unless there is something repugnant in the subject or context,—
Interpretation clause.

(1) all words and expressions used to denote the possessor of any right, title or interest in land, whether the same be proprietary or otherwise, shall be deemed to include the predecessors and successors in right, title or interest of such person ;

(2) " land " means land which is let or held for agricultural purposes, or as grove-land or for pasturage. It includes land covered by water used for the purpose of growing *singhara* or other similar produce, *but does not include* land for the time being occupied by dwelling-houses or manufacturing, or appurtenant thereto ;

(3) " rent " means whatever is, in cash or kind, to be paid or delivered by a tenant for land held by him, and in chapter IX includes " sayar " as defined below.

When used with reference to a thekadar rent means the amount payable by the thekadar to his lessor under the terms of the theka.

A share of the value of timber payable to the landholder by local custom on a sale of trees by a grove-holder is rent.

(4) " sayar " includes whatever is *to be paid or delivered to a landholder* by a lessee or licensee on account of the right of gathering produce, forest rights, fisheries, tanks *not used for agricultural purposes*, the use of water for irrigation, *whether from natural or artificial sources*, or the like ;

(5) " pay " with its grammatical variations and cognate expressions, when used with reference to rent, includes " deliver " with its grammatical variations and cognate expressions ;

(6) " landholder " means the person to whom, and " tenant " the person by whom, rent is, or but for a contract, express or implied, would be payable ;

" tenant " includes a grove-holder, but does not include a mortgagee of proprietary rights, a rent-free grantee *or, save as otherwise expressly provided by this Act, a thekadar ;*

and "landlord" means a landholder who has a proprietary right.

Explanation.—Where the word "landholder" is used with reference to a thekadar it means the person to whom the thekadar's rent is payable.

(7) "sub-tenant" means a tenant who holds land from a tenant thereof other than a permanent tenure-holder or fixed-rate tenant, or from a rent-free grantee thereof who is liable to have rent fixed under section 187;

(8) "holding" means a parcel or parcels of land held under one tenure, or one lease, engagement or grant, and includes the interest of a thekadar;

(9) "agricultural year" means the year commencing on the first day of July and ending on the thirtieth day of June;

(10) "registered" includes attested under the provisions of section 127;

(11) "improvement" means, with reference to a tenant's holding, any work which adds materially to the letting value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is after execution made directly beneficial to it: and, subject to the foregoing provisions, includes—

(a) the construction of tanks, wells, water channels, and other works for the storage, supply or distribution of water for agricultural purposes;

(b) the construction of works for the drainage of land, or for the protection of land from floods, or from erosion of other damage by water;

(c) the planting of trees and the reclaiming, clearing, enclosing, levelling, or terracing of land;

(d) the erection of buildings on the holding or in its immediate vicinity, elsewhere than on the village site, required for the convenient or profitable use or occupation of the holding; and

(e) the renewal or reconstruction of any of the foregoing works, or such alterations therein, or additions thereto, as are not of the nature of mere repairs; but does not include—

(f) such water channels, embankments, levellings, enclosures, temporary wells, or other works as are made by tenants in the ordinary course of cultivation;

(12) "Board," "Revenue court," "Revenue officer," "Settlement officer," "Assistant settlement officer," "Assistant collector," "Tahsildar," "revenue," "mahal," "lambardar" and "minor" have the same meaning respectively as in the United Provinces Land Revenue Act, 1901; and "Assistant collector in charge of a sub-division" has the same meaning as "assistant collector in charge of a sub-division of a district" in the said Act;

(13) "lease" includes *gabuliat*;

(14) "decree" means any order which, so far as the revenue court is concerned, finally disposes of a suit;

(15) "Grove-land" means any specific piece of land in a mahal having trees planted thereon in such numbers as to preclude the land

or any considerable portion thereof being used primarily for any other purpose, and the trees on such land constitute a grove.

Explanation I.—The word “trees” does not include tea plants, rose bushes, betel plants, plantains, and papitas, or any mere shrubs, bushes, plants or climbers.

Explanation II.—The word “trees” includes fruit-bearing trees, such as mango or jack fruit, which occupy the land for a long period, but does not include trees, such as guavas or peaches, which occupy the land for comparatively short periods.

CLAUSE 3(2).

Maulvi Shahab-ud-din : I propose that for the definition of “land” in the Bill, the following be substituted :—

“‘Land’ means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture and includes the site of buildings and other structures on such land.”

So far as the definition of land is concerned it appears that there was no definition of this expression in the Act of 1881. It was only for the first time that in the Act of 1901 a definition of land was introduced. It was the object of the framers of the Act of 1901 that groves should also be included in the definition of land. But somehow or other it appears that the groves were not finally included in the definition of land. And the definition in 1901 was only this—“land means land let or held for agricultural purposes.” It is admitted in this Bill also that the grove contemplated to be included in the definition is a grove which entirely precludes the idea of cultivation, because I will show presently that in sub-clause (15) of this clause 3 a grove is said to be trees standing on land to such a number and to such an extent that cultivation is impossible. And at the same time this Act is primarily meant to apply to land which is let only for agricultural purposes. So under these circumstances what would be the advantage gained in introducing grove-land in the definition of land in the Act? I am afraid it may be said without much contradiction that in no Act in this country is grove-land included in the definition of land. Under these circumstances it was obvious that when this definition was introduced in this Act one would have expected some sort of reason or hint to show the object for which the grove-land is going to be included. On referring to the report of the select committee on this sub-clause it will be found that the *singhara* has been very elaborately dealt with, but no reason at all has been given for including grove-land in the definition of land. If it were simply a question of technicality, I would not take the time of the Council, because after all I am not justified, in a measure of this kind in which very important issues are involved, and I am afraid members are so keen on these issues that they would find that the debate I am leading may to some extent, according to them be not very useful. I think personally that because the definition of grove-land has all along been omitted, the object has been clear, and that is that grove-lands are held, as the board has constantly expressed its opinion, either in accordance with a special custom prevailing in the village or under special contract, and that grove-land as such is not held for cultivation. It has been the object so far of the framers of the Rent Act not to be concerned with questions that may better form the subject of dispute in courts other than revenue. Now

first of all in order to include grove-land in the definition of land, the word grove-land has to be defined.

Hon'ble the President : Will the honourable member kindly resume his seat ?

It appears that the word grove-land occurring in this sub-clause has been defined later. It would therefore perhaps be better to postpone the discussion of this sub-clause till we have settled the definition of grove-land in sub-clause (15).

Hon'ble Sir Sam O'Donnell : I have no objection. I understand that the suggestion is that the definition of land should be considered in connexion with the chapter on groves ?

Hon'ble the President : No. The word grove-land is defined in sub-clause (15) and this word happens to occur in clause 3, sub-clause (2). I think it would be better if we take up the definition of grove-land before we discuss this sub-clause (2).

Hon'ble Sir Sam O'Donnell : I have no objection.

Hon'ble the President : The honourable member can therefore reserve his remarks till a later stage.

We propose to take up the definition of the word "land" after we have disposed of the definition of the word "grove-land."

Maulvi Shahab-ud-din : So, I need not say anything further.?

Hon'ble the President : Not so far as this goes. Sub-clause (2) will be postponed till we have disposed of sub-clause (15). Let us take the definition of "grove-land" at once. Is there any objection to that ?

Honourable members : No, no.

CLAUSE 3(15).

Pandit Nanak Chand : I beg to move that in clause 3, sub-clause (15) for the word "trees" in line 2 the words "fruit or timber trees or both which occupy land for long periods," be substituted.

The object of my amendment is that we should treat land as grove-land where fruit or timber trees or both are planted and which occupy the land for long periods. Later on in the explanations I have got some more amendments, but in the present amendment I have sought to bring in some portion of explanation No. 2.

Hon'ble the President : Is it only a verbal amendment or a substantial one ?

Pandit Nanak Chand : It is only a verbal one, but in its consequences it is a substantial one ; in explanation No. 1 it is stated that the word "trees" does not include tea plants, rose bushes, betel plants, *plantains* and *papitas* or any mere shrubs, bushes, plants or climbers, and in explanation No. 2, it is stated, "The word "trees" includes fruit-bearing trees, such as mango or jack fruit, which occupy the land for a long period." From this it is apparent that the word "trees" as defined here does not include timber trees ; very often timber trees are planted with fruit trees in groves, the same explanation further goes on to state, "but does not include trees such as guavas or peaches which occupy the land for comparatively short periods." Again, trees like guavas and peaches are planted mixed up

[Pandit Nanak Chand.]

with trees like mangoes and jack fruit. I would therefore submit, that the definition should be such as to include all timber and fruit trees of longer duration. The Board of Revenue held in their selected decision No. 1 of 1913 that guava grove is a grove of the same character as that of mango trees. From explanation we find that the guava is treated as a tree of shorter duration as compared with mango trees which is treated as a trees of longer duration. I think guava tree also occupies land for a fairly long period.

Hon'ble the President : Is the honourable member talking of explanation II ?

Pandit Nanak Chand : No, Sir. I want to incorporate for the word "trees" the words "fruit or timber trees or both which occupy the land for a longer period."

Hon'ble the President : I thought you were talking of guavas.

Pandit Nanak Chand : In explanation II it is provided that guavas and peaches will be treated as short-term trees. I want the guavas to be treated as long-term trees if my amendment is accepted, it will further obviate the necessity of having explanation II in the Bill and will remove the distinction on the basis of duration of the trees which may constitute a grove.

Hon'ble the President : The honourable member is concerned more with timber than with fruits ?

Pandit Nanak Chand : Yes, Sir, and also with treating trees like guavas as long-duration trees..

Hon'ble Sir Sam O'Donnell : I think that the honourable member has misunderstood the Bill. He seems to think that the definition in the Bill and the explanations exclude timber trees. That is not so. They include timber trees provided that the timber trees are trees which will occupy the land for a long period. We considered carefully in the select committee whether we should include the words "timber trees," but we decided against doing so because it is very hard to say what is a timber tree and what is not. Some people may call a certain tree a timber tree and others may not. The real test is the length of time for which the land is occupied by the tree. Grove-land is governed by a special chapter which contains a number of special provisions about transfer, succession, and so on. Therefore there must be clear test for distinguishing grove-land from other land. The test laid down in the definition is this: "Grove-land" means any piece of land in a mahal having trees planted thereon in such numbers as to preclude the land or any considerable portion thereof being used primarily for any other purpose, and the trees on such land constitute a grove." The explanation then goes on to make it clear that the reference is only to trees which occupy the land for a long period. That is the reason for explanation No. II. It does include timber trees, provided they satisfy the test of occupying the land for a long period.

Maulvi Shahab-ud-din : I am not in favour of the amendment, which will come to this, that I am not in favour of the word "trees" being understood as meaning both timber and fruit trees. However, as it is, it appears to me and I think this is also the opinion of some other members

that the trees that are the subject of legislation in this Bill are trees in respect of which there can be relation of landlord and tenant. One can hardly see what relation of landlord and tenant will be in respect of trees such as *babul* or *shisham* or some other trees like that. So it appears to me that the word tree was intentionally meant to be a tree which would be bearing fruit, for in the succeeding explanation also mention is made of trees bearing fruits. In these circumstances I am afraid that unless the word "tree" is explained more fully, I would not include timber trees in this. The Hon'ble Finance Member said that some people may call a guava tree as a timber tree. Now, I submit, Sir, that it would hardly be sane on the part of anyone if he puts a guava tree for a rafter except for the purpose of committing suicide, because it is not the kind of tree which is lasting. Therefore unless the word "tree" is left as it is it will be difficult. After all, what is the law of the landlord and tenant? The tenant gets something by the cultivation of the land and the landlord on the other hand gets something from him. In these circumstances I would ask that the word "tree" be left as it is to be later interpreted in the best way that it could be interpreted in the interests of the parties. I am opposing the amendment proposed.

I have to discuss grove-land in connexion with my definition of "land". I hope you will, Sir, give me an opportunity to do so later.

Hon'ble the President: The honourable member will get an opportunity to speak on the definition of "land." As the word "grove-land" occurs in sub-clause (2) of clause 3, the honourable member can refer to it later. Of course I do not know what is at the back of the honourable member's mind and therefore I cannot say whether his remarks will be in order or not.

Maulvi Shahab-ud-din: It would be rather hard if I get an opportunity only to deal with my definition of land in the abstract and not in connexion with grove-land. If I am not going to get a chance later, I may speak now.

Hon'ble the President: The honourable member may speak now so far as the definition of grove-land is concerned, but nothing as regards the definition of land should be discussed now.

Maulvi Shahab-ud-din: May I, Sir, with your permission, just clear one point? Supposing the question is put to the Council that the definition of grove-land should form part of the Bill and the Council accepts it, and after that I turn to the definition of grove-land, shall I be permitted to say anything about it?

Hon'ble the President: The honourable member can discuss grove-land now, but will have opportunity later to say that grove-land should not form part of land.

The question before the House is that in line 2 of sub-clause (15) of clause 3 for the word "trees" the words "fruit or timber trees or both which occupy land for long periods" may be substituted. According to the parliamentary practice I shall put first the question that the words in the sub-clause do stand part of the Bill. That is to say, I shall not put the actual words of the amendment to the House, but shall put the question that the word "trees" should stand part of the sub-

[Hon'ble the President.]

clause. There are different sets of words proposed for words in the clauses of the Bill. The technical way to put it is that the words in the Bill be put to the House. If the House decides that they should remain as they are, the subsequent amendments fall to the ground. But if the House decides that they should be deleted, then of course the question of the insertion of different words arises. I shall first put to the House whether the word "trees" in the sub-clause do stand part of the Bill or not. If the House says "No," then we come to the amendment whether for the words "fruit or timber trees or both which occupy land for long periods" others should be inserted. If the House says "Yes," the amendment falls to the ground. I hope I have made myself quite clear.

Question, that the word "trees" in the sub-clause do stand part of the Bill, put and agreed to.

The amendment of Pandit Nanak Chand was therefore lost.

CLAUSE 3(15) EXPLANATION II.

Pandit Nanak Chand : I move that in line 3 substitute a "full-stop" for the "comma" after the word "period" and delete the rest of the explanation, viz., "but does not include trees, such as guavas or peaches, which occupy the land for comparatively short periods." The amended explanation will read as follows:—"The word 'trees' includes fruit-bearing trees, such as mango or jack fruit, which occupy the land for a long period." My object in moving this amendment is that trees like guava which are excluded from the definition of "trees" should be included, as they are valuable fruit trees which occupy the land for a fairly considerable period. As compared with mango or *shikam* trees, they sometimes occupy a smaller period. But on the whole they occupy a fairly long period. If we exclude guava trees from the definition of "trees," the result would be that if a tenant plants a grove which consists mainly of guavas or other similar trees, the tenant will be liable to ejectment from the plots of land which are occupied by such trees, as the land will not be treated as grove-land. I would just give an instance. If a statutory tenant, who plants a grove with guava trees and shortly after he has planted the grove he dies. His successor according to the provisions standing in the Bill will be entitled to hold that land for three years only and will be liable to ejectment after three years. The Board, as I pointed out, have held under select decisions No. 1 of 1913, that land planted with guava trees, is grove-land of the same character as that which is planted with mango trees. So I would request honourable members of the House to remove this arbitrary distinction between the fruit-bearing trees on the basis of assumed long and short duration, and treat fruit-bearing trees like guava as trees which may constitute a grove.

Mr. H. David : I do not claim to have any knowledge of botany, but I have personal knowledge of mango trees, jack-fruit trees, and guava trees.

In the first place I am surprised that in a Bill of such importance an indefinite expression like long duration or short duration should have been allowed. Who would be the judge to say what is long duration or short duration—is it of 20 years, or 25 years, 50 years or 100 years? I think this indefiniteness in this definition of trees should be done away with and something definite should be put. Then as to duration, I

have planted mango trees. I have planted jack-fruit trees and I have planted guava trees and from my own personal knowledge I can say that mango trees and jack-fruit trees have dried up, but guava trees still stand. This I say in spite of the Raja Sahib who claims to be a zamindar of immense knowledge. I say from my personal knowledge that those guava trees have been in existence for the last 50 years. What other testimony do you want? I challenge anyone to say that they do not exist. Go to my garden and see for yourself. I think it is very improper to think that guava trees are of short duration. I, therefore, support the motion for two reasons; first that there should be no difference made between jack-fruit and mango trees on the one side, and guava trees on the other, and second that indefiniteness of long and short duration should not find a place in the definition.

Khan Bahadur Maulvi Fasih-ud-din : What about peaches ?

Mr. H. David : I have no knowledge of peaches because we do not grow peaches at Allahabad.

Lieut. Raja Durga Narayan Singh : I am sorry that I have to differ from Mr. David who claims to be experienced in the growing of guavas. As far as I know, this matter was discussed at length in the select committee. A guava tree does not last longer than a mango tree or a jack-fruit tree. It does not produce fruit year after year. I think it gives good fruit every third year. (Several voices, twice a year). The guava tree cannot last more than ten or fifteen years and so I think this trees should not be included. Hence, I oppose the motion.

Rai Bahadur Thakur Hanuman Singh : I agree with my friend Mr. David that guava trees last for a very long time and if you read explanation I and explanation II you will find by comparison that the guava trees have been classed with teak and rosewood. Those who plant guava trees expect to get profit from those trees from generation to generation. In certain districts, it is a custom to plant guava trees and to derive income therefrom. If guava trees will be classed as plantains, papayas or other trees of very short duration, then the tenant will be deprived of his benefit which he expected to derive at the time of planting guava grove and will be ejected after a time or after completing his statutory period. So I would request the House to exclude guava trees and to class them as mango trees.

Hon'ble the President : The honourable member has spoken only about guavas and left the peaches in the lurch.

Rai Bahadur Thakur Hanuman Singh : Sir, peaches are not so lasting as the guava trees.

Khan Bahadur Maulvi Fazi-ur-Rahman Khan : On a point of order. Has he proposed another amendment, or has he supported the amendment ?

Rai Bahadur Thakur Hanuman Singh : I have supported the amendment.

Maulvi Shahab-ud-din : If the grove-land or any law about it is to be introduced in the Act, I would submit that it is absolutely necessary that these two explanations should be maintained in the Bill; because the honourable members would see that a grove-holder is one who is

[Maulvi Shahab-ud-din].

in possession of such a grove-land which precludes the idea of cultivation. A grove-holder is not a grove-holder of any trees of whatsoever kind, but his right as a grove-holder is restricted only to those kinds of trees which occupy the land for a very long time and there is no chance of a grove-holder to have any cultivation in the grove. So in these circumstances, a distinction has to be made in the case of trees which preclude the chance of cultivation and trees which do not. For instance, ordinary trees, guavas or peaches or oranges and the like, are trees which can be maintained on the land and at the same time permit of cultivation. So in respect of these trees the grove-holder is not a grove-holder.

Mr. R. Burn : I think the object of the select committee was a fairly clear one; whether they have achieved it or not is for the House to determine. It has been recognized that you have two classes of groves, you have the class which produces timber trees, *shisham* or mango, to take the two commonest, and you have the class of grove which is more of the market garden type. I think the vernacular word is *turshaw*. The object of the select committee was to put the first class of grove into the special provisions of chapter XII, dealing with questions of inheritance and so on. Ordinarily those groves are governed by the terms of the *wajib-ul-arz*. If the *wajib-ul-arz* is silent, chapter XII of this Bill proposes what incidents will apply in the absence of any written contract. The second class of grove is, as I have said, more of the nature of a market garden, and the opinion in the select committee was that groves of that class should be subject to the ordinary incidents of a tenant's holding. The honourable mover of this amendment expressed the opinion that if a statutory tenant planted a grove of the second class and died, his heir can get ejected without any compensation at all. That, I think, is not quite correct.

Pandit Nanak Chand : I did not say about compensation. I said he will be liable to ejectment after three years.

Mr. R. Burn : I think, however, the heir could claim compensation for improvements, and, that being so, the object which the select committee had in view seems to be attained. The discussion has mainly turned on the question whether guavas should be put in the first class of groves or in the second. Where doctors disagree I am rather shy of expressing an opinion, but the general impression I have gained from experience in various districts in the province is that the guava belongs to the second of those classes.

Pandit Nanak Chand : It is clear from the personal experience of my friend Mr. David that guava trees are trees which occupy land for a considerable period. He has stated that he has seen trees which are as old as 50 years. I think this is a period which might fairly be treated as a long period for any tree. I am grateful to my friends who have supported this amendment. My friend the Raja Sahib of Tirwa has contested the point made by my friend Mr. David. It has been suggested that if this explanation which is sought to be deleted by my amendment, is deleted, then the result would be that even peaches which last for comparatively shorter duration will be brought in the definition of trees constituting a grove. I would draw the attention of my honourable friend to explanation No. I where it is said :—“ The word ‘ trees ’ does not include tea plants, rose bushes, betel plants, plantains, and papayas, or any mere shrubs, bushes, plants or

climbers." The list of short-duration trees or shrubs that is given in explanation No. I is not exhaustive and is not conclusive. It is illustrative, and if there are any trees of the nature of peaches or other trees of shorter duration, they will surely be covered by explanation I. My friend Khan Bahadur Maulvi Fasih-ud-din Sahib hinted that I intended by this amendment to include even shrubs as trees. I would point out to my learned friend that I have not attempted to touch or tamper with explanation I. The shrubs and those trees which are enumerated there will stand as they are. Now my friend Khan Bahadur Maulvi Sahab-ud-din Sahib has pointed out that the two explanations ought to stand. I think he was labouring under a misapprehension and he thought that I wanted to delete both the explanations. That is not the fact. I only want to do away with the arbitrary distinction which is sought to be incorporated in explanation II between trees like mango trees or jack fruit on one side, and guava trees on the other. It has been pointed out by Mr. R. Burn that this explanation makes out a distinction by which grove-land planted with trees like *shisham* and mangoes will be dealt with under one class to which chapter XII will apply and those trees which are considered to be of shorter duration which are classed as *turshawa* trees will not be governed by the provisions of chapter XII regarding grove-lands. That is exactly my point. I want that chapter XII should apply to groves which are planted with guava trees. It has been pointed out from the official side that the tenant who will be liable to ejectment shall be entitled to claim compensation. Sir, what pains a poor tenant takes to plant a small grove and again what assurance is there that he will get proper compensation? Courts are after all human agencies and it is possible that in spite of their best intentions and in spite of their best care that they may devote to the question of compensation they may make mistakes and award compensation which may not be a proper compensation from the point of view of the tenant. The tenant should be allowed to retain the guava grove just as he is allowed to retain the mango grove or *shisham* grove. With these words I commend my amendment to the acceptance of the House.

Khan Bahadur Maulvi Fasih-ud-din : Is guava grove included in the existing Act?

Pandit Nanak Chand : I was not in the select committee, but from the ruling of the Board I have referred to guava grove is of the same character as a mango grove under the present Act.

Khan Bahadur Maulvi Fasih-ud-din : No. Is it included in Act II of 1901?

Pandit Nanak Chand : It is not specifically mentioned as it is proposed here.

Hon'ble Sir Sam O'Donnell : My friend Mr. David has complained that we have adopted a very indefinite test for distinguishing grove-lands from other land. He says that there may be different interpretations of the meaning of the terms "occupy the land for a long period." Well, I can only say that if he is able to produce a fool-proof criterion about which there will never be any doubt in the mind of any court, we shall be greatly obliged to him. We considered this point at great length in the select committee and we have come to the conclusion that no such test could be devised and we fall back upon the test of the length of time during which the land is occupied. The Council will, I believe, agree that that is a reasonable and commonsense test.

[Hon'ble Sir Sam O'Donnell.]

There appears to be difference of opinion as to the length of time for which guava trees last. Mr. David said "fifty years," while other members think they do not last more than ten years. I have no personal experience on this point, but the essential point is that the planting of guava and peach trees really comes under the head of market gardening because these are trees which require attention every year. They cannot be left alone. They must be attended to. They are not like mango trees which when once they have attained a certain age, may be left to themselves. That is the real character of land planted with guava and peach trees. And there is, therefore, no reason why such land should be treated any differently from ordinary agricultural land. As to peaches, the honourable mover himself admitted that land occupied by such trees ought not to be classed as grove land. He said, however, that that did not matter, as they would fall under explanation I, namely, bushes, shrubs, plants or climbers. Well, Sir, I do not know what a climber is, but I do not think that a revenue court would be inclined to class peach trees either as a bush or a shrub or as a climber.

Question put, that the following words do stand part of the clause :—

"The word 'trees' includes fruit-bearing trees, such as mango or jack-fruit, which occupy the land for a long period, but does not include trees, such as guavas or peaches, which occupy the land for comparatively short periods."

The House divided : Ayes 74. Noes 11.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Ball.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad K'jaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Lala Kishan Lal.
Babu Jai Narayan Chaudhri.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Raj Kumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.

Rai Amba Prasad Sahib.
Rai Bahadur Pandit Khargajit Misra.
Raja Suryapal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Subbizada Ravi Pratap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Rai Bahadur Thakur Mashal Singh.
Kunwar Krishna Pratap Singh.
Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Saiyid Muhammad Ashiq Hussain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.

Ayes.

Raja Saiyid Ahmad Ali Khan Alvi.
Khan Bahadur Chaudhri Muhammad
Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Mr. St. George H. S. Jackson.
Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad
Mohrotra.

Raja Shambhu Dayal.
Lieut. Raja Shaikh Imtiaz Rasul Khan.
Raja Jagannath Bakhsh Singh.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.
Dr. Ganesb Prasad.

Noes.

Mr. H. David.
Babu Narayan Prasad Arora.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Pandit Brijnandan Prasad Misra.

Pandit Bhagwat Narayan Bhargava.
Thakur Keshva Chandra Singh Chaudhri.
Rai Bahadur Thakur Hanuman Singh.
Pandit Hargovind Pant.
Babu Sita Ram.

Pandit Nanak Chand : I beg to move that in explanation II of sub-clause (15) of clause 3 for the "full-stop" in line 5 the following be substituted :—

"Unless planted with the express or implied permission of the landlord."

My first amendment to explanation II having been lost, I have to move this amendment. The explanation, if amended as I seek to amend it, will read as follows :—

"The word 'trees' includes fruit-bearing trees, such as mango or jack-fruit, which occupy the land for a long period, but does not include trees, such as guavas or peaches which occupy the land for comparatively short periods, unless planted with the express or implied permission of the landlord."

The object of this amendment is that if a tenant has planted guava trees or peach trees on a certain plot of land with the express or implied consent of the zamindar, then the benefit of chapter XII should be given to the grove-holder and his heirs. I think that when a tenant obtains the permission of the zamindar or plants a grove and takes considerable time in planting the same and the zamindar allows that grove to be planted with his eyes open, the zamindar ought not to be allowed to eject him from that land and the tenant should be given the benefit of chapter XII.

Khan Bahadur Shaikh Masud-uz-Zaman : I rise to oppose this amendment on the ground that in the first place I do not consider it relevant to put the words in the form of a definition. Of course they can be put technically, but what I mean is that a matter affecting the principle of certain sections should not ordinarily be incorporated in the definitions. Here, this amendment, if carried, will seriously affect the sections in chapter XII and I think that if it is intended to use the consent of the landholder for the benefit of the tenant a separate clause could better be put as an amendment under chapter XII. For this reason I oppose this amendment.

Maulvi Shahab-ud-din : The honourable member wants that the permission under which a tenant is to plant a grove may be either express or implied and he further wants that this be inserted in explanation II to clause 3(15). I may bring it to the notice of the honourable member that section 196 says :—

"A grove-holder is a person to whom land has been let or granted for the purpose of planting a grove or who has in accordance with

[Maulvi Shahab-ud-din.]

local custom entitling him to do so or with the written permission of the landlord . . . planted a grove."

In these circumstances I would submit that when a grove-holder is defined there, this amendment is premature. If, however, the honourable mover thinks that the law on this point should be changed altogether and that we should understand the law on this point differently from what it is put down in the Bill, then I think he had better propose an amendment to clause 196 in which it can be said that this express permission is not necessary and that the zamindar may not give any permission in writing but that his implied permission is quite enough. Therefore I think that this amendment should not be allowed at this stage being premature.

Khan Bahadur Maulvi Fasih-ud-din: I oppose this amendment on two grounds which I will mention very briefly. The first is this, that *turshawas* has not been included in the definition of "grove-land" in the present Act. It was not included in any of the previous Acts. It is not included in any tenancy law of any other province and it will be an innovation to include *turshawas* or fruit garden in the definition of grove-land. It is for this reason that there would be difficulties and intricacies in connexion with the assessment of land revenue. Secondly, because the clause about permission is unnecessary here. If a tenant plants a *turshawas* tree or any other kind of fruit trees on his land he will have to take permission, otherwise he will not be entitled to any compensation. In fact, if the planting of *turshawas* trees is to be treated as improvement, in that case the written consent of the landlord has to be taken under this Bill and not an implied consent. So this amendment is not only an innovation but it is unnecessary.

Hon'ble Sir Sam O'Donnell: I entirely fail to understand upon what principle this amendment is based. We have defined grove-land in the Bill as land which has trees planted thereon in such numbers as to preclude the land or any considerable portion thereof being used primarily for any other purpose than the grove. We wanted to make it clear that we referred only to trees which occupy the land for a long period. We did not include trees such as guavas or peaches which occupy the land for comparatively short periods. The honourable member had proposed to include guavas and peaches, but he has been defeated on that point. He now suggests that, provided the permission of the landlord is obtained, land planted with guava trees or peaches shall become grove-land. What is the sense in making that a test or criterion? If the land was not otherwise a grove-land, why should it become grove-land simply because the landlord gave his permission? As a matter of fact if guavas and peaches are trees as the honourable member contends, then such permission will always be necessary.

Pandit Nanak Chand: It has been suggested by some of the honourable members who have opposed this amendment that if it is sought to incorporate these words in the Bill they ought to be incorporated in chapter XII. If this amendment is rejected by the Council I will act upon the advice of my friends and table an amendment in chapter XII. Now it has been pointed out by my friend Khan Bahadur Maulvi Fasih-ud-din that *turshawas* tree is not included . . .

Hon'ble the President: But if the opinion of the House is taken upon this, the honourable member will be creating a bar.

Pandit Nanak Chand : I hope that that standing order will not be strictly enforced to keep out that amendment and I hope, Sir, that the latitude that you have allowed to all of us will hold good in my case too. My friend Khan Bahadur Maulvi Fasih-ud-din . . .

Hon'ble the President : Not as regards the admission of the amendment but as regards the merits of the amendment. When the House has once passed its judgement about an amendment it cannot discuss the same amendment over again. Of course, I am not saying now that this will not be allowed to be discussed. It is only a warning.

Pandit Nanak Chand : I do not say that this will happen. I will leave this to the honourable members themselves to decide. It is quite possible that some of the honourable members who opposed this amendment have opposed it on the ground of its being inappropriate at this stage, while others may be opposing it on its merits. It will be very difficult to find out whether they decided to oppose it on one consideration or the other. Therefore this amendment should be allowed to be considered later on as appears to be the wish of some of the honourable members, but at this stage I would just like to note what has been said by my friend Khan Bahadur Maulvi Fasih-ud-din. He has said that *turshawa* is not included at present under the present Act. But if he would be pleased to look at the phraseology of the two explanations appended to sub-clause (15) of clause 3 he will find in the list of trees that are given there by way of illustration there is not a single *turshawa*, namely, lemon, orange, etc. I submit, Sir, that trees of that character which are of shorter duration will be covered under explanation I which includes plantains and *papita* trees, which are neither climbers nor bushes nor shrubs. I do not suggest to include the *turshawa* tree in the definition, but I want to see that guava trees are not excluded. I have twice quoted in connexion with the discussion of this definition that in Selected Decision No. I of 1913 the Board of Revenue have held a grove planted with guava trees to be a grove of the character of a mango grove, and this is the point in issue.

Hon'ble the President : The point at issue is permission of the landlord, not guava trees.

Pandit Nanak Chand : Yes, Sir, the point in issue is that if a zamindar has given his permission, either expressed or implied—the express permission may be verbal or written, implied may be by conduct—for the planting of a guava grove, and if he has seen the grove planted and has not taken any steps to eject the tenant for planting that grove contrary to his intentions or permission, then he should not be permitted to treat that plot of land as land with a view to eject the tenant from that plot. I consider it only fair and just. I hope my landholder friends will adopt this amendment.

Question put, that these words be inserted.

The House divided : Ayes 1. Noes 77 :—

Ayes.

Pandit Nanak Chand.

Noes.

Hon'ble Sir Sam O'Donnell.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.

Hon'ble Rai Rajeshwar Bali.

Hon'ble Thakur Rajendra Singh.

Hon'ble Nawab Muhammad Yusuf.

Mr. G. B. Lambert.

Mr. E. A. H. Blunt.

Kunwar Jagdish Prasad.

Sir Ivo Elliott, Bart.

Noes

Mr. P. H. Tillard.
 Mr. H. A. Lane.
 Mr. R. L. Yorke.
 Mr. R. Burn.
 Mr. A. W. Pim.
 Mr. B. J. K. Hallows.
 Mr. E. L. Norton.
 Mr. H. G. Billson.
 Mr. R. J. S. Dodd.
 Colonel A. W. R. Cochrane.
 Mr. A. H. Mackenzie.
 Mr. M. P. P. Herchenroder.
 Raja Muhammad Ejaz Rasul Khan.
 Raja Bahadur Brij Narayan Rai.
 Mr. H. C. Desanges.
 Mr. H. David.
 Babu Khem Chand.
 Lala Kishan Lal.
 Babu Jai Narayan Chaudhri.
 Chaudhri Jaswant Singh.
 Rai Sahib Chaudhri Sheoraj Singh.
 Lala Babu Lal.
 Thakur Rajkumar Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Rai Bahadur Pandit Kharagjit Misra.
 Raja Suryapal Singh.
 Lala Dhakan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Lieut. Raja Durga Narayan Singh.
 Raja Narayan Pratap Singh.
 Raja Sri Krishna Dutt Dubo.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
 Raja Indrajit Pratap Bahadur Sahi.

Bhaya Hanumat Prasad Singh.
 Rai Bahadur Thakur Mashal Singh.
 Kunwar Krishna Pratap Singh.
 Mr. Muhammad Aslam Saifi.
 Rao Sahib Abdul Hameed Khan.
 Maulvi Sahab-ud-din.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid-ur-Rahman Khan.
 Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Shaikh Masud-uz-Zaman.
 Khan Bahadur Mr. Muhammad Ismail.
 Maulvi Abdul Hakim.
 Dr. Shafa'at Ahmad Khan.
 Saiyid Muhammad Ashiq Husain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Mr. Ashiq Husain Mirza.
 Khan Bahadur Munshi Siddiq Ahmad.
 Raja Saiyid Ahmad Ali Khan Alvi.
 Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
 Shaikh Abdus Samad Ansari.
 Mr. St. George H. S. Jackson.
 Lala Bohari Lal.
 Rai Bahadur Lala Mathura Prasad Mehrotra.
 Raja Shambhu Dayal.
 Lieut. Raja Shaukh Imtiaz Rasul Khan.
 Raja Jagannath Baksh Singh.
 Mr. E. M. Souter.
 Mr. Tracey Gavin Jones.
 Dr. Ganesh Prasad.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : I move, Sir, that the following words be added after explanation II, as explanation III :—" Land will become grove-land the time trees are planted."

Before proceeding further I shall request the Chair to allow me to add five words before the word "land" in this amendment. If I am permitted to do so my amendment will become more definite and will achieve the object for which it is moved in its entirety. I now await the permission of the Chair.

Hon'ble the President : What are the words ?

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : The words are "for purposes of section 19."

Hon'ble the President : That will depend on consideration of clause 19. You had better wait for that clause.

Pandit Govind Ballabh Pant : If this explanation is added here we will be in fact dealing with clause 19, and, moreover, it will be incompatible with clause 19.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : Very well, I give up those words, and move my original amendment. It is as follows :—" After explanation II add the following as explanation III :—" Land will become grove-land the time trees are planted.'" This is an innocent amendment. It does not aim at taking away any right from any.

body. It will not harm the tenants nor will it harm the landlords, and I have every hope that my amendment will find favour with this House. Our Tenancy Bill purports to govern the rights of grove-holders—it has defined grove-land and groves. It is, therefore, necessary that we should have some definite period at which a piece of land in which trees are planted will assume the character of grove. For this reason I am moving this amendment. We spent considerable time over the definition of grove-land in the select committee. One responsible officer of Government told me, I will not say where, that the intention of the framers of the Bill is that as soon as trees are planted land should become grove-land. If you refer to clause 19 of the Bill you will find that certainly that Government officer was right so far as the intention is concerned. Clause 19 clearly lays down that no statutory rights will accrue in grove-land. But at the same time, Sir, that learned officer told me that the definition correctly expressed the views of the framers of this Bill. I was, however, of opinion that the definition was defective. He did not agree with me. With all the respect due to that officer, I, however, beg to differ from him. When he told me definitely that the definition was not vague, I thought my knowledge of English was deficient. I, however, consulted half a dozen dictionaries and now I say with all the emphasis at my command that I was right. Now, let us examine the definition and let us see if it correctly expresses the intention. The definition runs thus:—"Grove-land" means any specific piece of land in a mahal having trees planted thereon in such numbers as to preclude the land or any considerable portion thereof being used primarily for any other purpose, and the trees on such land constitute a grove." My quarrel with this definition is in respect of two expressions. One, Sir, is the word "tree" and the other is the clause, "being used primarily for any other purpose." If this definition is retained, my apprehension is that if trees are planted on a piece of land that piece will not assume the character of grove-land for ten or twelve years. "Tree" means a plant with a woody trunk. It must have considerable height and must have thick foliage. Suppose mango trees are planted on a piece of land today. They will be about six inches each in height; their trunk will not be thicker than, I should say, the small finger; their foliage will not be thick and there will be no branches. At the most these seedlings will have half a dozen leaves each. It is, therefore, clear that the word "tree" will not apply to these seedlings for a considerable time. Moreover, if these seedlings are planted today it will be open to any one to argue that the land is not precluded from being put to any other use. The result will be that that piece of land will remain the holding of a tenant for a long period.

Another anomalous position will at times arise; and it is this. Suppose you plant a mango grove today and place it in charge of a tenant. He will look after the trees and will not pay any rent. The result will be that the poor landlord will lose his land, because the definition of grove-land will not apply to this land and statutory rights will accrue to the tenant. The landlord will lose those trees, the land and the money spent over them. This was never the intention of the framers of the Bill and certainly this can never be the intention of any reasonable man. The tenants will also suffer in one respect and it is this. All those special provisions which attach to grove-land will not apply to this land, say, for ten years, and the tenants will not be able to reap the benefits of those special provisions till the trees grow up. So, if the present definition is not altered the landlord will suffer, the tenant will suffer and we shall have a vague and harmful definition in our

[Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.]

statute which will not do credit to this assembly. For these reasons I commend my amendment to the acceptance of the House.

Khan Bahadur Shaikh Masud-uz-Zaman : I support this amendment. Besides what the honourable mover has already pointed out, I think it would be only a repetition of the existing custom recognized in the villages. The moment anybody plants seedlings of different trees, that piece of land is more or less reserved for future grove-land and it is not used for agricultural purposes, not even for growing vegetables. Besides this one thing will become perfectly clear if this explanation is added, i.e., the land on which these plants are planted will become subject to a nominal rent. It is only fair that when a land is reserved for a particular purpose and though the plants yield no produce for some time to come, that reserved land should still be assessed to rent. For this reason, I think it will reduce litigation on technical points if this explanation is added. With these words I support the amendment.

Pandit Nanak Chand : I regret to have to say that I have to oppose this amendment, innocent though it looks. It is, first of all, unnecessary and superfluous. I cannot conceive that a land which is not planted with trees will ever be considered as grove-land. For example, if certain plots are occupied by wheat crop or barley crop they will never be considered as grove-land. The land will be treated as grove-land only when trees have been planted on it. This stands to common sense.

The second ground for my opposing this amendment is that this might create some mischief and bring into existence avoidable litigation. Some tenants may begin to think that land becomes grove-land the moment trees are planted on it, even without the permission of the proprietor, and when the proprietor may seek to eject the tenant for planting trees without his permission the tenant may object on the ground that the plot in question is a grove-land under explanation III. I do not know what my friend has to say on this aspect. Perhaps it has escaped the attention of my friend Khan Bahadur Maulvi Fazl-ur-Rahman. I oppose the amendment to avoid unnecessary and avoidable litigation and will request the honourable mover to withdraw this amendment.

Hon'ble Sir Sam O'Donnell : When I first saw this amendment I admit that I did not understand what the honourable member was aiming at. It seemed to me that the amendment would leave the definition practically unaltered. Having heard what he had to say I now think I see his point. His contention is that trees may be planted and it may take a long time for the trees to grow up and in the interval the land will not be grove-land. I think that his purpose will be served much better and in a much clearer manner if the definition is amended in this way. "Grove-land" means any specific piece of land in a mahal having trees planted thereon in such numbers that when full grown they will preclude the land or any considerable portion thereof," etc. That, I think, will entirely meet the honourable member's point. Land ought to be a grove-land as soon as the trees are planted; and if there is any doubt on the point these words will make the matter entirely clear. May I, Sir, with your permission, move this amendment?

Hon'ble the President : Yes.

Hon'ble Sir Sam O'Donnell : I move that in clause 3 (15) for the words "as to" the words "that when full grown they will" be substituted.

Khan Bahadur Shaikh Masud-uz-Zaman : May I ask the Hon'ble the Finance Member whether this amendment will create any difficulties so far as assessment of rent is concerned ?

Hon'ble Sir Sam O'Donnell : I do not think it will make any difference to anybody.

Maulvi Shahab-ud-din : Can any member object to the amendment to the amendment which is being proposed ?

Hon'ble the President : The amendment to the amendment does not materially alter the meaning of the original amendment and therefore I do not think any honourable member need object to it.

Hon'ble Sir Sam O'Donnell : I hope my amendment will meet the honourable member's point.

Hon'ble the President : If there are any honourable members who want to oppose the amendment to the amendment they can now do so.

Pandit Govind Ballabh Pant : I have risen to ask the honourable member for Shahjahanpur to postpone the discussion of this clause till we reach chapter XII. There seems to be some confusion as to the implications of his proposal. It looks very innocent on its face, but it raises questions of a very grave character. I would just like to point them out, as there seems to be some confusion as to the exact meaning of grove-land and the consequences that follow by treating any particular bit of land as grove-land under this clause. Those honourable members who have studied chapter XII must have noticed that when any land is to be regarded as grove-land under chapter XII, then two results follow. On the one hand the tenant loses his occupancy or statutory rights in the land and, on the other hand, the tenant gets the right of transfer which he does not hold in respect of other lands. So when you introduce this amendment, the effect will be that if a person who is a statutory tenant plants a grove today and dies after five days, his heir will have the right to continue in possession of that land so long as the grove is not cut away. The land will, however, continue to be agricultural land so long as the trees do not become mature. Though the land is agricultural land, but because a grove has been planted the heir of the statutory tenant will be entitled to hold it probably for his own lifetime and to continue it on to his heirs further. This is the first effect: the other will be that while the land is being used for agricultural purposes, it may not be open to the landholder to assess rent on it or to seek enhancement as he could in respect of other lands. It is for the honourable members of this House to say whether they are prepared to accept that by the mere fact of certain seedlings being planted on the land such serious consequences should arise, which will gravely affect the rights and relations of the parties concerned. So, without labouring the point further, I suggest it to the honourable members concerned that in case they think that a provision like that is deserving of serious consideration, they should do so when we reach chapter XII and not at this stage. I would not say more,

Hon'ble the President : There are several motions before the House. The first motion is of Khan Bahadur Maulvi Fazl-ur-Rahman Khan, to which an amendment has been proposed by the Hon'ble the Finance Member. Now a motion has been made by Pandit Govind Ballabh Pant that discussion of this clause be postponed. We should first confine ourselves to the question whether consideration of this clause be postponed. If the motion is accepted, there is no use discussing the merits of the amendment. If it is not, we can then discuss the merits.

Question, proposed that the consideration of this clause be postponed.

Khan Bahadur Maulvi Fazl-ur-Rahman Khan : I oppose the motion of my friend Pandit Govind Ballabh Pant, for the following two reasons: (1) Much time of this House has already been spent on the discussion of this question. (2) The provisions of chapter XII have already been studied by each and every honourable member. Mr. Pant probably thought that members had come here without reading the Bill. That is not so. I do not think any advantage will be achieved if the consideration of sub-clause (15) of clause 3 is postponed. I therefore oppose the motion.

Hon'ble Sir Sam O'Donnell : I do not understand what we shall gain by the postponement of the consideration of this clause. Supposing the discussion of this clause were postponed, the result would be that as soon as we came to chapter XII we should have to begin with the definition of "grove-land." We should not get any further until we had actually defined "grove-land." How we shall be better off then by the postponement? It seems to me that the proper course is to decide what is "grove-land" and at a later stage to consider what are the incidents of grove-land and what are the rules and regulations governing it.

Question, that the consideration of clause 3(15) be postponed, put and negatived.

Hon'ble the President : Now the amendment to the amendment of Khan Bahadur Maulvi Fazl-ur-Rahman Khan is open to discussion.

Question, that the words "as to" in sub-clause 3 (15) do stand part of the Bill, put and negatived.

The amendment that in clause 3(15) for the words "as to" the words "that when full grown they will" be inserted, put and agreed to.

Maulvi Shahab-ud-din : I was laying before the House that grove was never included in the definition of land in any Act and I also said that there are several reasons for not including grove-land in the definition of the word "land." The definition which I propose is:—"Land means land which is not occupied as the site of any building in a town or village and is occupied or has been left for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the site of buildings and other structures on such land." I may also bring to the notice of the honourable members that grove-land has never been said to be land so far. It was said to be so about eighteen years ago in a ruling of the Hon'ble Board of Revenue in 1908. Since then it has always been said that grove-land is not land. The second point is that in considering the law on tenancy we are concerned with the relation between a landlord and tenant in respect of land which is agricultural and particularly land which is assessed to land revenue. It is also worth noticing that grove-land has never been assessed to revenue simply on the

consideration that it is not land. However, Sir, I may go on citing illustrations to show that it is not land. But after all it may be very profitable to include this in this Bill and it may be very useful to the landholder and tenants. The chief difficulty that I find in a legislation of this nature is that as it has been laid down in the Bill it would lead to a great deal of litigation. It is quite clear that the definition of grove-land applies only to those groves which preclude the idea of cultivation. You may take that as a guiding principle. I put it to the honourable members what would be the advantage first of all having a grove of the type in which there is nothing of cultivation absolutely, in the Act. Secondly, of taking the trouble of practically exhausting the law on grove-land, which, I submit, is rather difficult. There is no doubt that when we are enacting law we try, as far as possible, to hedge round difficulties. But it is very difficult to make a law so full and complete as to avoid all difficulties that the creator of difficulties may create subsequently. There are three things to be enacted. First, "grove-land" has to be defined; second, the sort of trees has to be defined, and, third, a full and complete law on the grove-holder has to be given. There are three sections in which the law is given. A grove-holder is defined as a person to whom land has been let or granted for the purpose of planting a grove, or a person who has in accordance with local custom entitling him to do so, planted a grove, on his holding as tenant. I want grove-land to be excluded from the definition of land. So that this Act will be simply governing only land and not grove-land. In this respect I think I am entitled to say that the law that has been enacted including grove-land in the definition of land, is defective and should be remedied. So I would point out that section 197 says: "Notwithstanding anything previously contained in this Act, but subject in respect of the matters mentioned in clauses (a), (b), (d), (e), and (g) to any custom or contract to the contrary—

- (a) it shall be presumed that a grove-holder holds the land in respect of which he is grove-holder under a lease the term of which will expire when the land ceases to be grove-land."

I need not take the time of the honourable members more than simply calling their attention to what the law will be. The law will be that the grove-holder, even if he has squatted for a day on grove-land, will be held to be a grove-holder for ever. The burden of proof and of rebutting this will be on the zamindar. The second is that the interest of the grove-holder would be transferable by voluntary transfer or in execution of a decree of a civil or revenue court or otherwise. This is a provision which enlarges the rights of a grove holder to transfer it and you can deduce for yourself what will be the result if a certain person has been allowed to hold a grove in a village on certain conditions and has been holding it for generations and is allowed a right to transfer, that he can transfer it to any undesirable person and bring anyone into the village, and the little profit or advantage that he gained annually from the grove can be taken from him by the decree-holder. Then it says "the interest of a grove-holder shall devolve as if it were land and the devolution of such interest shall not be governed by the provisions of section 24 or section 25."

Hon'ble Sir Sam O'Donnell: Are we discussing the chapter dealing with grove-land? The honourable member is going through the chapter and discussing the merits of all the various clauses in that chapter. That hardly seems to be relevant to the present discussion. It will come up later.

Hon'ble the President : I think the honourable member is only developing his argument; but I am sure he is labouring the point too much.

Maulvi Shahab-ud-din : I am only bringing this to the notice of honourable members and not enlarging on them and am rushing through as much as possible. Then it says that a grove-holder may sub-let the whole or any portion of his grove land, but not so as to confer on his sub-tenant any interest outlasting his own interest and that of persons claiming through him or to relieve himself of any of his liabilities to his landholder. You may see it for yourself. Then it says that a grove-holder shall not be liable to ejectment by his landholder except under section 84 or on the ground that he holds under a lease the term of which has expired, or will expire, at or before the end of the current agricultural year. Then we come to (f) : " No abandonment of his grove by a grove-holder shall of itself operate to give the landholder a right of re-entry under section 107. " On this I simply want to make one remark that this is going a little too much out of our way, because if a tenant wishes to abandon his holding and go away he should be entitled to do so. Then another question arises, that a landholder has got a right to distrain the fruit crop.

Hon'ble Sir Sam O'Donnell : The special question, as far as I can see, is one of jurisdiction, as to whether the revenue or civil courts are to have jurisdiction, not what the rights and liabilities of a grove-holder are.

Hon'ble the President : I am afraid the honourable member has not made his point so far.

The Council here adjourned for lunch.

After the recess, the Deputy President took the Chair.

Maulvi Shahab-ud-din : I will say very little about the grove-land, because I realize that this is not the time to discuss it in detail. The other section that I wish to bring to the notice of honourable members, because I presume that there are many honourable members who are not supposed to worry their heads about the technicalities of the revenue law, is section 198. It says: " Whenever it is found in any suit or other proceeding relating to grove-land that such land is held by a person who has no proprietary right therein, the court may presume that he holds such land as a grove-holder." The honourable members will notice that the section says that the court will presume. I submit, Sir, and I would also request other honourable members to consider, that this may lead to much litigation and litigation is very much ruinous to the tenants and also equally ruinous to the zamindar. Now as regards the definition of "land" the Bill says: " Land means land which is let or held for agricultural purposes, or as grove-land or for pasturage. It includes land covered by water used for the purpose of growing *singhara* or other similar produce, but does not include land for the time being occupied by dwelling-houses or manufactories, or appurtenant thereto." I submit that one objection that appears on the face of the definition is that it will not include trees mentioned in explanation 1 to sub-clause (15) of clause 3, because that explanation says: " The word ' trees,' does not include tea plants, rose bushes, etc." Secondly, I see that in the last part of the definition of "land" it is said that "it includes land for the time being occupied by dwelling-houses or manufactories, or appurtenant thereto." It certainly admits of one exception and that exception is this. For instance, a certain

amount of land has been let to a tenant and he builds a sort of enclosure or a cattle-shed for the purpose of cultivation. Such a case is contemplated by section 84. The proviso to that section says: "Provided that the use of a holding for the purpose of grazing or of raising stock (including horses) or the construction of enclosures suitable for stock-raising shall not constitute a ground for ejection under clause (a)." A tenant is entitled to have an enclosure or shed for his cattle stock or for the purpose of residing temporarily on his land, and I would say that if the definition of land is to exclude all sorts of buildings or land for agricultural purposes, then it should certainly be detrimental to the interests of the tenant and to the proper supervision and cultivation of his crop. It is necessary for him to have some sort of structure for his cattle-shed or for residing temporarily on it. It is for this reason that I have brought forward this definition. This is the definition contained in an Act which was passed in another province in 1887. I think it is very useful for the purposes of advancement of cultivation and for the purpose of affording convenience to the tenant himself and his bullocks, that is to say, the tenant will be able to put up some sort of enclosure on the land for that purpose. It, therefore, appears that even if these two portions of the definition of land be retained it would still be an improvement on the definition in the present Bill.

Secondly, I beg to submit that I would like to divide "for agricultural purposes" into "for agricultural purposes" and "for purposes subservient to agriculture" and this will obviate the necessity of adding elaborate explanations to the definition in sub-clause (15) of clause 3, because agriculture in chief would be the cultivation of foodstuffs, and so on, while anything subservient to agriculture would also include *singharas* which are mentioned in the definition in the Bill and would also include such sort of temporary plantation as has been mentioned in explanations I and II. The definition therefore proposed by me would contain all these things and at the same time would not be so elaborate. It is with this object that I have moved my amendment.

Mr. R. Burn : I do not propose to occupy the time of the Council with any lengthy speech as the honourable mover has done. It seems to me that his main point is whether the definition of "land" is to include grove-land or not, and the effect of the inclusion or exclusion is to decide the question of jurisdiction in cases connected with groves. It was held under the old definition in Act XII of 1881 that where a landlord gave land to a tenant for planting a grove, that constituted a special lease which could be the subject of litigation in a revenue court. The select committee which dealt with our present Act II of 1901 altered the definition of land, putting it in a very simple form, and from the account of their discussions it appears that they thought that cases concerned with groves would still be tried by revenue courts. For some time the Board of Revenue also took that view. Afterwards, as has been stated already in the debate on other amendments, differences of opinion arose, and at the present time there is a certain amount of conflict as to which court has jurisdiction. Now, from the time of the select committee on Act II of 1901, throughout the deliberations of the committee of 1910, the committee which drafted the present Bill, and the select committee, I do not think there has been a single dissentient voice on the question that cases regarding groves should, if possible, be disposed of by the revenue courts. The 1910 committee was a committee very strong both on the official side and on the non-official side. It included the Hon'ble Raja Sir Rampal

[Mr. R. Burn.]

Singh, the late Nawab Abdul Majid, Lala Sukhbir Singh, Raja Kushalpal Singh, Babu Brijnandan Prasad of Moradabad, Pandit Moti Lal Nehru, and the late Raja Tasadduq Rasul Khan. It is for the first time today that we have heard it seriously argued that these cases should be transferred definitely from the revenue courts to the civil courts. If such a course is approved by the Council it means that the whole of chapter XII becomes useless. We can hardly legislate in a Bill which purports to deal with the law of landlord and tenant for agricultural tenancies on matters which we expressly say are not to be dealt with by the revenue courts.

On the other parts of his proposed definition I need say practically nothing. His definition as it stands is not free from doubt. He first of all excludes land occupied by the site of a building in a town or village and at the end of the definition he includes the site of buildings and other structures on such land which I presume refers to buildings and other structures on land which is let or held for agricultural purposes or for purposes subservient to agriculture. Well, the courts have frequently had to deal with the question of buildings like cow-sheds and other things put up on holdings and no difficulty has arisen under the present definition in regard to those. The main object of the changed definition which the honourable member has moved is, as I said, to remove cases regarding grove-land from the purview of the revenue courts and that is a proposal which, in view of all the previous opinions expressed, I think I should strongly oppose.

Khan Bahadur Hafiz Hidayat Husain : After hearing the long and laborious speech of my friend Maulvi Shahab-ud-din, the only point I think he was making was that he wanted in this particular case to oust the jurisdiction of the revenue courts and substitute for it the jurisdiction of the civil courts. Well, Sir, I would certainly say that civil court decisions are far superior to the decisions given by the revenue courts, but the former jurisdiction is subject to certain limitations and the test of those limitations is the subject-matter of the suit. Now, Sir, we all know that up to 1881, when Act XII of 1881 was enacted, whenever a question similar to the one under discussion arose for adjudication, the jurisdiction was that of the revenue court and not of the civil court. In the old Acts, Act XII of 1881 or Act II of 1901, the legislature did not attempt a definition of grove-land and consequently there have been differences of opinion both in the Board of Revenue and in the High Court. As a matter of fact different Judges of our local High Court have held different opinions, but the principles now deducible from the rulings of the High Court are precisely the same as those of the decisions of the Board of Revenue. They are that if land is let initially for planting a grove, then the civil court has jurisdiction, but if a grove is planted on the holding of a tenant, then the jurisdiction of the revenue court is not ousted. There have been so many conflicts of opinion and so many different decisions on this point that I welcome this provision in the Bill which confines the jurisdiction to decide matters concerning groves to revenue courts. I think, Sir, it is only fair that matters that concern agricultural land—and after all grove-land is let for a subject cognate to agriculture and does not travel very much beyond the relations of a landlord and tenant *qua* landlord of an agricultural land—should remain vested in the revenue courts and should not go to the civil courts. I entirely support what Mr. Burn has said in this matter.

Maulvi Shahab-ud-din : I have said enough and I do not want to say anything more.

Question, proposed that the following be substituted for the definition of "land" in the Bill.

“ ‘Land’ means land which is not occupied as the site of any building in a town or village and is occupied or has been occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the site of buildings and other structures on such land.”

Pandit Nanak Chand : Sir, would you put it in the form in which the Hon'ble the President puts the amendments before the House ?

Deputy President : As there are two other amendments on the same subject I think that before we adopt the procedure laid down by the Hon'ble the President the two amendments would be disposed of.

Question, that this definition be substituted, put and negatived.

Khan Bahadur Hafiz Hidayat Husain : I beg to move that after the words “for pasturage” the words “or horticultural purposes” be also added. This Bill draws some distinction between horticulture and agriculture and that you will find embodied in section 40 of the Bill. Now, in section 40 (a) you find the words “for agricultural development including farming on improved lines, dairy farms, poultry farms, stock-breeding, horticulture or any similar purpose” and for “groves” you find a separate clause in (c) of the same section. Neither Act XVIII of 1873 nor Act XII of 1881 defines land. They exclude from it “all purposes save agriculture.” Now, Sir, that definition is being attempted I move that the word “horticulture” should be added. Act X of 1859 did not similarly define land, but it was held in XVI Calcutta, which is a ruling under that Act, that it applied only in respect of land let for agricultural or horticultural purposes. I have just said that I think that in matters like this the revenue courts should alone have jurisdiction and although “horticulture” is not largely resorted to in these provinces, still there are villages where horticulture does exist and I think that if we extend the definition so as to include horticulture, the jurisdiction of the revenue courts will be recognized in this matter.

Pandit Govind Ballabh Pant : It appears to me that the amendment sought by Khan Bahadur Hafiz Hidayat Husain is unnecessary and as I myself do not clearly understand the meaning of the word “horticulture” I would very much like the villagers to be saved from that anomalous confusion which may make it worse confounded in this Bill. According to section 40 (a) to which he has referred it appears to me that agriculture does include horticulture, for clause (a) runs thus “for agricultural development, including farming on improved lines dairy farms, poultry farms, stock-breeding, horticulture or any similar purpose.” From this I am entitled to interpret the word “horticulture” as being included in the governing clause agricultural development—poultry farms also. I think agricultural development covers everything here, otherwise it would not be included in clause (a) and in that view I hold that agriculture does include horticulture and in any case the definition will be more unintelligible if horticulture has to be added than if it remains what it is.

Hon'ble Sir Sam O'Donnell: I think there is an objection to this amendment which my honourable friend perhaps has not appreciated. If this amendment were made the effect would be this that if any person let a portion of his garden or compound, say to a mali, for growing garden vegetables, the person to whom it was let would acquire statutory rights in the land. Now that might be very inconvenient to owners. And the change, will certainly not benefit the tenants as a class, because, if we make this change everyone will take good care in future never to let any portion of his garden or compound for growing garden produce. It is quite true that there is a reference in section 40 to horticulture, but I think the two cases are quite distinct. What we were thinking of when we included horticulture in clause 40 was not the ordinary garden but gardens on a large modern scientific scale, quite a different proposition. Land taken up for this purpose would be ordinary agricultural land. The honourable member suggested that, unless we include horticulture, the villagers might be prevented from growing garden produce, but I do not think anything of the sort will happen. The land cultivated by the villagers will always be classed as agricultural land. Therefore the retention of the present definition will do no harm to anybody, whilst the insertion of the amendment would be decidedly inconvenient to the owners of gardens and compounds.

Amendment, by leave, withdrawn.

CLAUSE 3(3).

Pandit Nanak Chand: I move that after the words "or kind" the following words be inserted "or both." If this amendment is accepted the definition of rent will read as follows: "Rent means whatever is in cash or kind, or both, to be paid or delivered by a tenant for land held by him and in chapter 9 includes *sayar* as defined below." The object of this amendment is to make it possible for zamindars to realize rent even if it was partly in cash and partly in kind. The present definition, if it remains unamended, will mean that the rent will be treated as rent if it is either in cash or kind, but if it consists of both there will be some difficulty about the precise meaning of rent and it will be constructed as either rent in kind or in cash. There are cases where the tenants and the zamindars enter into agreements whereby the zamindar agrees to receive and the tenant agrees to pay rent partly in cash and partly in kind. The definition ought to be such as to cover such cases. Beside this certain cases have come to my notice where the tenant had agreed to pay something to the landlord in the shape of *Habubat*, viz., bhusa, fodder, etc., in addition to cash rent. Zamindars often find it difficult to recover the *Habubat*, as they cannot realize them through revenue courts and have to seek their remedy in civil courts. I think if this amendment is accepted this difficulty will be obviated.

Hon'ble Sir Sam O'Donnell: The honourable member is under the impression that this amendment, if accepted, will alter substantially the definition. I cannot understand how he has come to that conclusion. It surely ought to be perfectly clear to everyone that the present definition of rent means whatever is offered in cash or in kind or in both. So that the honourable member's definition will make no substantial alteration whatever. On the other hand we have taken the present definition from the definition in section 4 (3) of Act II of 1901, and it is always very undesirable to alter definitions unless you wish to alter the substance of the section, because if you do so courts may then begin to wonder whether you

intended by changing the definition to alter the substance. It is therefore far better to keep to the present definition which has given no trouble whatever and clearly covers payments in cash or payments in kind, or in both cash and kind.

Amendment, by leave, withdrawn.

Rai Bahadur Thakur Hanuman Singh : I rise to move that the words "value of timber" in line 7 be deleted and the following be substituted therefor :—

"Timber or its value."

My intention in bringing this amendment is to show that in certain places the custom prevails that the timber is divided between the landlord and the tenant. If my amendment be accepted by this House the landlords would not have to go to civil courts in cases the tenants would remove the timber without delivering landlords' share. Such cases would be decided by the revenue courts which would be convenient to both.

Hon'ble Sir Sam O'Donnell : I have no objection to this amendment. I am quite prepared to accept it.

Question, that the words "value of timber" be struck out and the words "timber or its value" there inserted, put and agreed to.

Maulvi Shahab-ud-din : I move that the definition of "rent" should be as follows :—

" 'rent' means whatever is payable to a landlord in money, kind, or service by a tenant on account of the use or occupation of land held by him and in Chapter IX includes sayar as defined below."

I will give very briefly the reasons why I want this. First of all, I think that the word "service" had better be included if there is no objection. Secondly, the words "the use or occupation" include the case of a person who occupies land without the permission of the landlord which is also provided for in the Bill. This amendment simply makes the definition more complete. I hope it will meet with the approval of other members.

Rai Bahadur Thakur Hanuman Singh : I rise to oppose the amendment which has been moved by my friend Maulvi Shahab-ud-din Sahib ; and my reasons are two. Number I—If the amendment is accepted then a tenant who sub-lets his holding to a sub-tenant shall have to go to a civil court to claim his rent because the word used is "landlord" and not "landholder." Number II—I submit that there are many landlords who allow holdings to be held by their servants and such holdings are held at the pleasure of the landlords. They grant them as *muafi khidmati* which are resumeable at pleasure. If a servant is to acquire statutory right or occupancy right in such land, then I think the position of the landlords will be very very difficult and no servant of a landlord will get any *muafi khidmati*, because the landlords will be afraid that either statutory rights or occupancy rights will accrue in favour of the servant. This amendment should not be accepted by the Council for the reasons I have just given.

Hon'ble Sir Sam O'Donnell : I too am not in favour of this amendment, but not precisely for the same reasons as given by Thakur Hanuman Singh. I do not think that if this amendment were accepted there would be any danger of the disappearance of *muafi khidmati*. I do

(Hon'ble Sir Sam O'Donnell.)

agree with Thakur Hanuman Singh that there is one slip in the amendment, viz., the use of the word "landlord." No doubt the honourable mover meant to use the word "landlord" as co-extensive with the word "landholder." But that is a minor matter. My principal objection to this amendment is this. In the Act of 1881 the rendition of services was included in the definition of rent. In the Act of 1901 the rendition of services was discarded and in this matter we have in drafting the Bill followed that Act. The term "rendition of service" is one which has given rise to difficulties. It is not clear, nor could it very well be made clear whether it includes services of a menial nature or labour. Also I think that at a time when *begar* is on the decline it is undesirable to introduce an amendment which might be held to lend some slight countenance to that practice. For these reasons I think that this amendment is unnecessary and undesirable.

Amendment, by leave, withdrawn.

CLAUSE 3 (4).

Pandit Nanak Chand: I beg to move that after the words "gathering produce" the words "or fruits of groves" be inserted.

I am not quite sure, Sir, if the landholder would be entitled to realize the rent for gathering of fruits of groves from his sub-tenant under this definition. If I am given to understand that he can recover his dues under the phrase "gathering produce" then I will not press this amendment. If he is not entitled to recover his dues from the sub-tenant then this amendment should be accepted.

Hon'ble Sir Sam O'Donnell: I think this amendment is quite unnecessary. Grove-land is now "land" within the meaning of the Bill and the term "gathering produce" is quite wide enough to include gathering of fruits. The amendment seems therefore to be unnecessary.

Amendment, by leave, withdrawn.

Thakur Raj Kumar Singh: I move that at the end of sub-clause (4) of clause 3, the following words be added:—

"*Karab* and *bhusa*, etc., payable by a tenant to his landholder over and above his cash rent which is payable under some valid contract or local custom is a rent within the meaning of this clause."

In some districts under the *wajib-ul-arz* and *dastur-dchi* this is taken from the tenants and this should be included in the definition of "*sayar*." This is why I move the amendment.

Thakur Har Prasad Singh: I rise to oppose this addition. If *karab* and *bhusa* is a part of rent as is provided in sub-clause (3) of clause 3, then there is a clear provision for it because rent can be paid in cash or kind. If *karab* and *bhusa* is payable under the *wajib-ul-arz*, as the learned mover says, then in that case it cannot be *sayar*. If this addition is made to the definition of *sayar*, it will have its own bad effect. Many cases will go to court for the recovery of the same and this ought to be discouraged. I, therefore, oppose the amendment.

Pandit Nanak Chand: When my amendment No. 346 in clause 3(3) for the insertion of the words "or both" was under discussion on this very point, it was not supported by any of my zamindar friends and the

Hon'ble Finance Member pointed out that such rent in cash or kind was part of rent, and that there was no necessity of amending the definition of rent. It is already included in the definition of rent, it need not form part of the definition of *sayar* over again. For this reason I oppose the amendment.

Hon'ble Sir Sam O'Donnell : I, too, must oppose this amendment. If *bhusa* is deliverable under the contract of tenancy, then it is rent since "rent" means whatever is in cash or kind to be paid or delivered by a tenant for land held by him. On the other hand, mere customary deliveries are clearly not rent, if for no other reason than because they cannot be assigned to any particular holding. It was held, for example, in 34 Allahabad by a bench of three judges that customary deliveries do not constitute rent of holdings. It is also perfectly clear, as Khan Bahadur Maulvi Fasih-ud-din has shown, that payments of this kind cannot be brought under the head of "sayar." The amendment is really one which should be entirely unacceptable to the Council.

Amendment, by leave, withdrawn.

CLAUSE 3(5).

Pandit Nanak Chand : I move that in clause 3(5) after the words "reference to rent" the words "or *sayar*, revenue, profits, between co-tenants or co-sharers" be inserted. The amended definition of "pay" reads as follows:—

"Pay with its grammatical variations and cognate expressions, when used with reference to rent, or *sayar*, revenue, profits, between co-tenants or co-sharers includes "deliver" with its grammatical variations and cognate expressions."

The amendment is obvious and I need not say anything about this. I think the amendment ought to be accepted, as it will not keep these words confined to rent alone.

Hon'ble Sir Sam O'Donnell : It seems to me that this amendment is an unnecessary complication. The honourable member apparently desires to make it clear that the word "pay" includes "deliver" when used with reference to *sayar*, revenue or profits. But the definition in clause 3(8) has worked quite well in the past and I see no object in altering it. Also it does not seem to me that the words "co-tenant or co-sharer" will fit in with the definition.

Pandit Nanak Chand : I consider that the words "pay" and "deliver" with their grammatical variations will have to be used in the cases for profits between co-sharers and co-tenants, and also in cases relating to "sayar." Therefore it is necessary that these terms are made applicable to the case of *sayar*, revenue or profit just as in the case of rents.

Question, that these words be inserted, put and negatived.

Khan Bahadur Maulvi Fasih-ud-din : I move that the present definition of landlord, which runs as follows : "'landlord' means a landholder who has a proprietary right" should be substituted by the definition "'landlord' means person who has a proprietary right in a village or a mahal either in respect of a particular share or specific plot of land." The word "landlord" found a place in all the old Tenancy Acts of the Agra province till in 1901 it was substituted (in Act II of 1901) by the word "landholder." A hue and cry was then raised by all the owners of

[Khan Bahadur Maulvi Fasih-ud-din.]

land. They thought that this was a thin end of the wedge in order to deprive the zamindars of their vested rights and their vested interests. They thought that it was a precursor of the substitution of the zamindari system by the ryotwari system. But all that hue and cry proved to be a cry in the wilderness. The zamindars want that they should not be treated worse than the zamindars of other provinces, specially the taluqdars and zamindars of Oudh. At last the Select Committee on the Agra Tenancy Bill found it possible to introduce this word "landlord." But the definition which stands now still clings to the word "landholder" which is so much hated by the landlords. It is as if one would say that a free man is a slave who has been liberated from the thralldom on slavery. We want that if the word "landlord" is to be introduced it should be defined in a straightforward and plain fashion. We do not want that we should still continue to be stigmatized with the word "landholder."

I know that it will be said that landholder means a person who receives rent and the landlord as well as the tenant who receives the rent can come under the definition of landholder and for that reason this definition says that "landlord" means a landholder who has also a proprietary right. Could not this definition be avoided, could not this word to which we have been objecting since about two decades be avoided? Could it not be said that "landlord" is a person who owns land and who is the proprietor of the land? A definition of this kind would have satisfied everybody. This, I submit, is a very glaring instance of remarkable tenacity on the part of those who styled landlord as landholder. I think that when the Government and also the members of the Select Committee have agreed to introduce the word "landlord" it is but fair and just not to cling to the old word landholder in the matter of definition of landlord.

Hon'ble Sir Sam O'Donnell: My only objection to this is that it will involve an immense amount of trouble. We shall have to go through the whole Bill and make, I was going to say, innumerable but at any rate a large number of consequential amendments. And it is quite possible that we might inadvertently fail to make all the necessary consequential amendments in which case the results might be unfortunate. We have no objection at all to recognizing that a landlord is a person who has proprietary right, and the definition in the Bill makes that clear. It does say that a landlord is a landholder, but it also goes on to say that the landlord is a landholder who has a proprietary right. I cannot really see what objection there is even on sentimental grounds to the definition, because the definition recognizes the position of a landlord as proprietor. It should be quite clear to the Council that we have expressly inserted this part of the definition, that landlord means a landholder who has proprietary right, in order to make it clear that they are persons who are not mere landholders, but persons who have also proprietary rights. That meets the sentimental point. On the other hand if this amendment is carried we shall have the very heavy task of going through the whole of the Bill and making all the consequential amendments.

Khan Bahadur Maulvi Fasih-ud-din: I am sorry to say that I have not been able to grasp the significance of the objection that has been raised by the Hon'ble Finance Member. The amendment that I propose is simple enough. I say that landlord means a person who has a proprietary

right. So far the Hon'ble Finance Member seems to agree. He has no particular attraction for the word landholder. But further on I say: "who has a proprietary right in a village or a mahal either in respect of a particular share of specific plot of land." We find that in the Agra province the number of owners of specific plots of land is very large and there is hardly a single khewat in which there are not half a dozen miscellaneous plot-holders, as they are called, and they enjoy exactly the same rights as the landlord does in the matter of the transfer of the property, the realization of rent and so on; and their tenants too will get life interest according to the scheme in this Bill. The only difference between these miscellaneous plot-holders and the regular landlords, i.e., the owners of the khalsa, is this—that while the khalsa landlords have a right of pre-emption, the proprietary right of these miscellaneous plot-holders is limited to the plot which they possess as proprietors. I do not see in what way the complications in the Bill will arise; and if the Hon'ble Finance Member can show one single complication, I would be too glad to withdraw the last words of my amendment. But hitherto, I have very carefully considered the whole Bill and my definition is in the light of the classes that occur in this Bill and I fail to see in what way the complications will arise over this very simple definition of mine. My only idea in bringing forward this definition is not to leave this matter in doubt that the miscellaneous plot holders too are to be styled as landlords. I would therefore press my motion.

Hon'ble Sir Sam O'Donnell: I admit that the honourable member has discovered a slight flaw in our definition. I admit that the term landlord does not include a proprietor who cultivates himself the whole of his land. I would have had no objection to any amendment which corrected that slight flaw, provided it was not one which would mean our going through the whole Bill again and making a tremendous number of consequential amendments. I am sure, however, that if it is left alone no practical difficulty of any kind will arise. The definition is not completely exhaustive, but the slight flaw in it is of no consequence whatever to the practical working of the Bill. As regards the retention of the word "landholder" I cannot see that even on sentimental grounds there can be any objection. A landlord means a landholder, and a landholder is defined as a person to whom rent is paid. But we also add that a landlord is a person who has a proprietary right. Therefore, we make it quite clear that the landlord is not only a landholder but that he is also a person who has a proprietary right. That meets the point about recognizing proprietary rights.

*Question, that the words in the Bill stand part, put and negatived.
Amendment agreed to.*

CLAUSE 3(7).

Pandit Govind Ballabh Pant: In connection with this sub-clause (7) I have not to move any amendment, but I propose that this clause be taken up after we have disposed of section 19. The reason why I do so is this: that there are a number of amendments but tabled to section 19 which leads to the large question whether statutory rights should or should not arise in holdings belonging to fixed rate tenants and this sub-clause (7) will open up a discussion on that very large problem. If we take it up at this stage, we would be side-tracked into a discussion which will raise questions of

[Pandit Govind Ballabh Pant.]

very large importance while we are dealing with the interpretation clauses; I understand that in the House of Commons, the practice is that interpretation clauses are taken up after the Bill has been gone through, and that seems to be a sound practice. In order to avoid the discussion which will take place on this sub-clause and in order to save enormous time it is better that we proceed on to other clauses of this Bill and leave this sub-clause. It raises identically the same question that we have to deal with in section 19.

Hon'ble Sir Sam O'Donnell: I have no objection to the consideration of sub-clause (7) being postponed till we have discussed clause 19. I quite appreciate the point of Pandit Govind Ballabh Pant.

Question, that the consideration of sub-clause (7) be postponed, put and agreed to.

CLAUSE 3(13).

Maulvi Shahab-ud-din: I move "that sub-clause (13) of clause 3 be omitted." That sub-clause says: "Lease" includes qabuliyat. I have brought forward this question for the reason that under the law "lease" is the only legal thing and qabuliyat is only a part of it. Now lease means a document in which the tenant and the landlord are both parties. According to the English system of conveyancing a lease is written in this way: "I the landlord and I the tenant," with the result that it is a very good and legal arrangement. On the other hand if you allow qabuliyat to be included in the lease in which it is said: "I have taken so much land from such and such zamindar on such and such rent." If you allow this to be done by tenants without the landlord being a party, it will lead to a lot of frauds. We have found this from experience, that qabuliyats contain statements which are false regarding the proprietary right of the landlords and interested people go on inserting such false allegations.

After some time civil cases crop up and create a lot of harm to one party or other. Then further on a fraud often occurs in cases where a Hindu widow or a Muhammadan parda-nashin lady is concerned. The karinda does what he likes and mentions in the qabuliyat whatever he likes with the result that the lady never comes to know of it. On the other hand if it is made compulsory that the document be executed by both the parties, it would be very useful. I have moved this amendment for the reasons which I have already given and I hope sufficient attention will be paid to it by the House.

Mr. R. Burn: The honourable member has given us one side of the case, but he must also remember that there are certainly dishonest tenants also. Doubts occasionally arise as to the terms of tenancy, and in the case where it is alleged that a lease has been given to the tenant, the tenant's reply in such a case is that unfortunately he has lost the lease. Many of these leases need not be registered, and it has been the practice in many parts of the country to get evidence of a tenancy by means of the qabuliyat given by the tenant. The zamindar keeps that. The question comes in court. He has that document. Doubts arise as to whether the qabuliyat was sufficient when the law said that a lease should be given and the committee of 1910 put these words in their draft so as to make it clear

that if a qabuliyat was proved, that was as good evidence of the tenancy as the production of a lease which in many cases the tenant said he had lost.

Amendment, by leave, withdrawn.

The Council was then adjourned to the following day.

APPENDIX A.

(See page 129 *supra*.)

Statement referred to in answer to starred question No. 8 for February 23, 1926, showing the total number of Hindu, Muslim and Christian landholders in the United Provinces and the total amount of land revenue payable by the proprietors of each of the three religions.

District.	Hindus.		Muslims.		Christians.	
	Number.	Revenue.	Number.	Revenue.	Number.	Revenue.
PROVINCE OF AGRA.		Rs.		Rs.		Rs.
Dehra Dun	6,846	1,24,480	151	5,498	52	8,091
Saharanpur	47,328	12,69,308	4,581	4,43,353	26	16,188
Muzaffarnagar ..	59,326	18,50,217	28,816	5,61,157	8	607
Meerut	148,679	23,96,882	42,172	5,23,214	150	53,517
Bulandshahr	27,326	16,29,189	11,286	9,10,076	23	33,757
Total, Meerut division ..	289,005	67,70,071	86,506	24,47,298	29	1,14,155
Aligarh	40,705	19,47,081	4,791	4,31,481	11	338
Muttra	59,694	15,01,887	1,972	1,15,296	2	11
Agra	43,760	16,60,876	1,989	98,649	5	187
Mainpuri	37,468	13,21,107	1,329	85,109	1	1
Etah	26,560	11,67,413	8,819	1,36,980	67	4,222
Total, Agra division ..	208,187	75,97,869	18,800	8,67,515	86	4,759
Barilly	16,939	9,82,261	9,153	5,32,636	21	2,853
Bijnor	19,737	11,45,900	24,141	2,59,234	88	62,018
Budaun	27,101	8,73,229	16,778	3,25,716	8	2,918
Moradabad	48,850	12,40,230	55,303	6,04,159	10	819
Shahjahanpur ..	39,339	8,69,073	10,059	3,32,105	10	830
Pilibhit	8,367	5,47,972	2,149	2,19,697	6	266
Total, Rohilkhand division	150,333	56,58,665	117,883	22,78,547	143	69,659
Farrukhabad	32,400	10,85,453	9,765	1,75,275	5	364
Etawah	31,186	14,16,700	666	32,496	..	..
Cawnpore	31,814	18,20,678	2,134	84,574	15	511
Fatehpur	10,609	11,16,780	3,944	3,48,640	1	annas 8
Allahabad	6,663	19,96,101	8,777	6,97,957	11	10,179
Total, Allahabad division	112,672	74,34,712	20,386	12,98,942	32	11,054-8
Jhansi	32,816	5,88,310	274	6,168	9	3,224
Jalaun	24,179	8,75,623	1,074	21,376	..	..
Hamirpur	3,820	9,23,146	1,708	43,976	1	1,240
Banda	26,113	7,71,346	2,154	81,869	1	15
Total, Jhansi division ..	86,928	31,58,025	5,300	1,58,389	11	4,479

District.	Hindus.		Muslims.		Christians.	
	Number.	Revenue.	Number.	Revenue.	Number.	Revenue.
		Rs.		Rs.		Rs.
Benares	10,759	9,13,356	378	47,456	..	..
Mirzapur	6,597	6,97,051	265	32,411	1	81
Jaunpur	28,260	10,58,160	3,691	3,17,485	..	..
Ghazipur	33,046	9,61,632	5,820	1,82,698	1	25
Ballia	31,232	6,43,521	2,726	37,808	1	3
Total, Benares division ..	159,894	42,73,720	12,360	6,17,793	3	109
Gorakhpur	262,047	33,25,573	3,233	2,41,902	26	70,460
Basti	201,370	26,01,377	22,130	2,58,257	15	70,169
Azamgarh	91,907	16,21,274	23,630	5,19,794	11	13,217
Total, Gorakhpur division	555,324	75,48,229	49,043	10,19,953	52	1,53,846
Naini Tal	17,166	1,23,150	92	14,810	28	729
Almora	93,581	2,73,961	217	416	49	718
Garhwal	56,928	1,55,067	121	16	49	734
Total, Kumaun division ..	172,675	5,32,173	430	15,312	126	2,181
Total, Province of Agra ..	1,737,013	4,29,74,069	310,358	86,93,754	712	3,60,282-5
OUDH.						
Lucknow	5,309	6,53,908	2,179	3,57,483	5	62
Unao	52,326	13,56,095	4,762	2,28,377	5	51
Rao Bareilly	4,224	1,85,532	1,573	1,70,217	1	744
Sitapur	7,237	13,23,800	1,063	3,50,254	..	..
Hardoi	33,248	14,11,936	4,851	2,22,185	15	3,768
Kheri	5,710	8,28,610	947	1,70,453	55	14,990
Total, Lucknow division	103,564	69,59,831	15,355	14,99,369	79	19,611
Fyzabad	9,309	11,04,146	2,011	3,31,010	2	242
Gonda	16,048	16,62,325	3,901	2,51,449	3	2,432
Bahraich	835	9,62,893	258	3,89,388	..	..
Sultanpur	31,521	12,26,611	3,499	2,55,191	1	239
Partabgarh	8,990	12,60,470	1,453	56,341	1	1
Bara Banki	17,894	12,02,178	6,074	10,23,896	..	..
Total, Fyzabad division ..	84,097	74,18,118	17,196	22,57,225	7	2,914
Total, Oudh	192,651	1,43,77,999	32,551	37,56,594	86	22,525
TOTAL, UNITED PROVINCES	1,927,609	5,73,52,068	342,909	1,24,50,348	798	3,82,807-8

APPENDIX B.

(See page 131 *supra*.)

*Statement referred to in answer to starred question No. 18 of
June 29, 1926.*

Name of office.	Name of clerk.	Date of appointment.	Date of confirmation.	Remarks.
Office of Director of Land Records.	(1) Babu Manni Lal ..	May 1, 1920.	March 1, 1921.	Was appointed as a clerk on reduction of his post of traffic inspector.
	(2) Munshi Tasdiq Husain.	November 3, 1921.	November 3, 1921.	
	(3) Babu Ram Kumar	May 26, 1925.	November 16, 1925.	
	(4) Munshi Sajjad Husain.	January 24, 1926.	January 24, 1926.	
Office of Inspector-General of Registration.	(1) Pandit Madho Ram.	November 24, 1921.	November 29, 1923.	
	(2) Babu Girja Kishore	June 5, 1923.	April 1, 1925.	

APPENDIX C.

(See page 131 *supra*.)

*Statement referred to in answer to starred question No. 45 of
June 29, 1926.*

Towns in which electric schemes are in operation.	Towns for which electric licences have been granted but in which supply has not yet commenced.
Agra.	Aligarh.
Allahabad.	Bonares.
Cawnpore.	Muttra.
Lucknow.	
Mussoorie.	
Naini Tal.	
Saharanpur.	

APPENDIX D.

(See page 132 *supra*.)

Statement referred to in the answer to starred question No. 49 asked by Mr. MUHAMMAD ASLAM SAIFI, for the Council meeting of June 29, 1926.

Designation.	Qualification.		Date of appointment to the present post.	Date of passing from Technical schools.	Previous experience in the line, if any.
	Technical.	Educational.			
Electrical overseer I ..	Passed Mechanical Apprentice class of the Thomason Civil Engineering College, Roorkee, and stood 3th in order of merit.	Eighth standard of the high schools.	April 1, 1911 ..	June, 1906 ..	Worked in the Military Works Service power house in Jhansi and in the power house of the Jumna Mission College, Allahabad, and in the United Provinces Exhibition.
Electrical overseer II ..	Passed Mechanical Apprentice class of the Thomason Civil Engineering College Roorkee. Stood first in order of merit and was awarded one silver medal and Rs. 50 for general merit and one silver medal for machine and construction drawing.	Vernacular Final Examination in the 1st division and 8th standard of the high schools.	August 1, 1919	June, 1910 ..	Worked in Bikaner State power house, Government Canal Foundry and Workshops, Roorkee, Imperial Durbar, Delhi, M. W. S. Grass Farm, Peshawar, and New High Court, Allahabad.
Electrical overseer III	Passed Mechanics class of the Government Technical School, Lucknow, in 2nd division.	IX standard of the Government High School.	November 1, 1924.	May, 1923 ..	Worked in the Bengal Telephone Works, Calcutta, and in the power house of the United Provinces Electric Supply Company Limited of Allahabad.

APPENDIX E.

(See page 145 *supra*.)

No. 294/XI—149.

FROM

G. B. F. MUIR, Esq., M.L.C.,

SECRETARY TO GOVERNMENT,

MUNICIPAL DEPARTMENT,

UNITED PROVINCES,

To

ALL COMMISSIONERS OF DIVISIONS,

UNITED PROVINCES.

Dated Allahabad, January 30, 1922.

SIR,

I AM directed to forward for your information a copy of Council Proceedings relating to resolution No. 7 moved by Lieutenant Nawab Muhammad Ahmad Sa'id Khan in the Council meeting of December 6, 1921, recommending to His Excellency the Governor to impress upon every municipal boards in these provinces the advisability of establishing a poor-house within its limits. I am to ask that it may be brought to the notice of the municipal boards in your division that under section 8(1) (b) of the Municipalities Act, 1916, they have the power to open and maintain poor-houses and that Government would recommend that they should take advantage of that power.

I have the honour to be,

SIR,

Your most obedient servant,

G. B. F. MUIR,

Secretary.

No. 295/XI—149.

COPY, with a copy of the proceedings, forwarded to all chairmen of municipal boards, United Provinces, for information and necessary action.

By order of the Governor acting with his Ministers,

E. R. FRANK,

Assistant Secretary.

RESOLUTION *re* ESTABLISHMENT OF POOR-HOUSES BY
MUNICIPALITIES.

Lient. Nawab Muhammad Ahmad Sa'id Khan : The resolution that stands in my name runs thus :—

"That this Council recommends to the Government to impress upon each and every municipal board in these provinces the advisability of establishing a poor-house within its limits."

To explain my meaning I would like to say that I want that these houses should serve a double purpose, that is they should provide shelter to those ill, aged and blind beggars who have got no shelter in the world and who are exposed to the burning heat and benumbing cold, and should also serve as a reformatory school or a workhouse for those healthy and strong beggars who have adopted begging as a profession. Subsequently I hope that when we have such institutions in all municipalities, in due course we will be able to turn these wanderers into useful members of society. I need not persuade my honourable colleagues in the Council in order to win their support or the acceptance of the Council because I know that it will appeal to their generosity. After all, it is not the exclusive right of the tax-payers only to reap all the benefits out of these local bodies. I think that they will not grudge a little to their poor brethren and that they will follow the example of European countries where such poor-houses or workhouses are doing a lot of good work and will thus stop this public begging which has become a nuisance and also mitigate the suffering of those who are really in great need of help. With these few words I beg to move my resolution.

Mr. Masud-uz-Zaman : Before I give my support to this resolution I would like to know what the honourable mover of this resolution really wants the Government to do in this matter. The question before us is that poor-houses should be established by the municipal boards. There is no question whatever that nobody can doubt the advisability of supporting a proposal for the establishment of such philanthropic institutions, but my submission is that if the honourable mover really wants the Government simply to impress the municipal boards, I may inform him that the municipal boards are already very much impressed with the advisability of such a move. They are really anxious to do something in that direction, and I am sure that practically every member of the municipal board would be ready to subscribe from his own pocket to a certain extent if the necessity arises. If the resolution is accepted, the Government would impress the municipal boards probably by sending a circular letter. That circular letter would go to the chairman who would lay it before the board. The board would consider it. But what it would do would be to postpone it for the time being, for that time which never really comes, for that time when they can afford to found such institutions. I think the honourable mover has not given us any idea as to what cost we will have to incur even in small municipalities for the upkeep of such an institution. In a very small municipality containing 20,000 inhabitants I think it would cost no less than three or four thousand rupees a year. There are very few municipalities which can afford to incur so much expenditure; most of them are not even able to afford the very essential expenses on sanitation and full sanitary equipment. For these reasons I think that if the honourable mover really wanted the Government to send a circular letter to all the municipal boards, it would have been easily done by simply addressing a private request to the Hon'ble the Minister for Local Self-Government. I wanted him to be a little bit more serious in the matter. He ought to have asked the Government to request the district boards to help the municipal boards pecuniarily. That is done in most cases in educational and other matters. If the Government had advanced some hope in the matter of some sort of pecuniary assistance to the municipal boards, the boards would have been too delighted to bear the rest of the expenses. For this reason, although I consider it

[Mr. Masud-uz-Zaman.]

a useful thing, I do not think that a mere circular letter to the municipal boards would be of much use. The object of the honourable mover is really very philanthropic and there is no harm if the municipal boards are reminded of their duty which they already realize to the fullest extent.

Mirza Muhammad Sajjad Ali Khan : I rise to support the resolution moved by my honourable friend, the Nawab Sahib of Chhatari. In the first session of the Council I moved a resolution that professional begging should be stopped in public lanes and streets. Some honourable members of the House opposed my resolution on the ground that there is a class of religious beggars called Sanyasis whom it would be very difficult to distinguish from professional beggars who depended for their maintenance on private charity alone. Afterwards the Hon'ble the Minister of Local Self-Government also said that importunate begging should be discouraged. I also suggested in that resolution that poor-houses should be established for professional beggars to do away with their bad habits and in order that they may come out as good citizens of the country : some may become goldsmiths and so on : but the Hon'ble the Minister for Local Self-Government expressed his opinion that no money was forthcoming, and, therefore, I withdrew my resolution. Now I find that my gallant friend has made out a good case, and the resolution should be left to the good sense of the members of this Council.

Nawabzada Muhammad Yusuf : I rise to support the motion made by my learned friend, Lieutenant Nawab Muhammad Ahmad Sa'id Khan. As he has said, this resolution is meant to serve the dual purpose. One is really to provide shelter for those who are infirm and old and who really cannot find any shelter anywhere else and sometimes die of hunger under a tree. The other object is to give shelter to those young people who, owing to bad circumstances and ill luck, wander about and lead a life of destitution and mendicancy. If we were to have a poor-house in each municipality, there would be room for the activities of the municipalities to reclaim these young people and to make them useful people. They will be able to earn their livelihood and lead a decent life. It might be said that by setting up poor-houses would be encouraging mendicancy. I am sorry to say that I am unable to subscribe to this view. In India mendicancy has almost become a sad institution which has been gathering force all these days. No doubt there is the recognition of the fact on the part of the educated people that mendicancy should not be encouraged, and as far as possible, these people should be made to earn their livelihood and to lead a more useful life. But when all this is said it cannot be lost sight of that, unless we have these people at a particular spot, there is little prospect of reclaiming them, and they are condemned to an unfortunate life. I fully realize the financial difficulties which may be felt in giving effect to this resolution ; but I say, Sir, that a bold and forward step should be taken at an early date and all the municipalities should be informed and impressed upon that they should take as early steps as possible to give effect to this resolution. With these words, I support the resolution.

Thakur Manak Singh : On humanitarian grounds I desire to accord my support to the resolution, although, as has been fully recognized by

previous speakers, the fact of mendicancy being associated with religion in India makes the position impracticable. I, however, support the proposal which emanates from my honourable friend, the Nawab Sahib of Chhatari, so that his humanitarian spirit may not be benumbed. I may point out that the object with which the Nawab Sahib of Chhatari, has moved the resolution, that is to say, in order to prevent the nuisance of begging in towns and villages, is not possible to achieve because of the profession of begging being associated with religion. Nevertheless, it would be a good thing if the municipal boards are able to provide a rendezvous for those who are helpless. My chief reason of supporting the resolution is, as I have said, that it would encourage the humanitarian impulse of the Nawab Sahib of Chhatari.

Mr. G. B. F. Muir : The position of Government in this matter is simple. The Municipalities Act draws a clear distinction between the duties which the municipal board must perform and those which it may perform. The maintenance of poor-house falls in the latter class. Government is quite prepared to bring to the notice of municipal boards that they have power to open and maintain poor-houses and even to recommend to them that they should take advantage of that power. But there the power of Government ends. Government cannot force upon municipalities the duty of opening poor-houses. The fact is that this matter is really a local one, and I would suggest that it really lies within the province of individual members to do what they can to bring pressure to bear upon the municipal board with which they are connected and so induce them to open poor-houses. The only way in which the Government could possibly secure the opening of poor-houses would be to bribe municipal boards by the offer of financial assistance, and at the present time there is very little hope that Government will be in a position to do that.

Lieut. Nawab Muhammad Ahmad Sa'id Khan : When I put the resolution I was perfectly aware the Government cannot possibly compel municipal boards to adopt any scheme, but what I mean is simply to bring to their notice that it would be advisable if they could have some such thing in their towns. I am grateful to all the members that they were good enough not to strike any note of discord, but I would like to say a few words as to what has fallen from my honourable friend the honourable member for my own district of Bulandshahr. I do not mean in the least that those beggars who have got any religious importance should be stopped. Neither do I take them as a public nuisance, nor are they such beggars who can be called a nuisance to the public. Wherever they go they are received with respect and they are considered a blessing rather than a curse to society. As to what has fallen from my honourable friend the member for Banda. I quite agree with him that it will be a costly scheme, but at the same time it is very encouraging to find from what he has admitted in his speech that many private persons will come forward to help municipal boards, and that the workhouses will be able, I hope, to defray part of the cost. Therefore, I do not think, that the scheme is impracticable or not feasible. I beg to withdraw my resolution after the assurance that has been given by the Revenue Secretary that the desirability of establishing a poor-house in each and every municipality will be brought to the notice of the municipal boards of these provinces,

APPENDIX F.

(See page 147 *supra*.)

Statement referred to in the answer to unstarred question No. 21 asked by KHAN BAHADUR HAFIZ HIDAYAT HUSAIN, on June 29, 1926.

Statement showing the total number of teachers and the number of Muhammadan teachers in mixed and Islamia schools maintained by Municipal boards.

District.	Municipal Board.	Mixed schools.		Islamia schools.	
		Total number of teachers.	Number of Muhammadan teachers.	Total number of teachers.	Number of Muhammadan teachers.
Dehra Dun ..	1. Dehra ..	2	..	..	..
	2. Mussorie ..	1	..	..	..
Saharanpur ..	3. Saharanpur ..	22	7	7	7
	4. Hardwar Union ..	8	..	2	2
	5. Deoband ..	6	4	1	1
	6. Roorkee ..	15	2	1	1
Muzaffarnagar ..	7. Muzaffarnagar ..	12	3	3	3
	8. Kalraua ..	7	..	2	2
Meerut ..	9. Meerut ..	48	8	10	10
	10. Ghazilabad ..	6	..	3	3
	11. Hapur ..	9	..	2	2
Bulandshahr ..	12. Bulandshahr ..	27	2	2	2
	13. Khurja ..	3	..	1	1
	14. Sikandrabad ..	4	..	3	3
	Total, Meerut division ..	165	26	42	42
Aligarh ..	15. Koil (Aligarh) ..	23	6	7	7
	16. Hathras ..	..	..	..	..
	17. Atrauli ..	8	3	..	..
	18. Sikandra Rao ..	2	..	..	..
Muttra ..	19. Muttra ..	50	3	..	..
	20. Brindaban ..	23	..	..	..
Agra ..	21. Agra ..	84	14	9	9
	22. Firozabad ..	8	..	..	..
Mainpuri ..	23. Mainpuri ..	9	..	..	..
Etah ..	24. Etah ..	6	1	2	2
	25. Sonon ..	10	1	..	..
	26. Kasganj ..	9	1	2	2
	27. Jalesar ..	10	3	..	..
	Total, Agra division ..	247	32	20	20
Bareilly ..	28. Bareilly ..	184	70	13	13
Bijnor ..	29. Bijnor ..	9	5	5	5
	30. Chandpur ..	2	2	..	..
	31. Dhampur ..	4	4	..	..
	32. Nagina ..	4	4	..	..
	33. Najibabad ..	3	2	..	..

District.	Municipal Board.	Mixed schools.		Islamia schools.	
		Total number of teachers.	Number of Muhammadan teachers.	Total number of teachers.	Number of Muhammadan teachers.
Budaun ..	84. Budaun ..	28	23	..	..
	85. Ujhani ..	4	1	..	..
	86. Sahaswan ..	8	5	..	..
Moradabad ..	87. Moradabad ..	113	61	22	22
	88. Chandausi ..	11	3	1	1
	89. Amroha ..	16	6	3	3
	90. Sambhal ..	21	13	4	4
Shahjahanpur ..	41. Shahjahanpur ..	49	22	2	2
	42. Tilhar ..	4	2	2	2
Pilibhit ..	43. Pilibhit ..	13	6	8	3
	44. Bisalpur ..	6	1	5	5
Total, Rohilkhand division		482	280	47	47
Farrukhabad ..	45. Fatehgarh-cum-Farrukhabad.	57	14	..	..
	46. Kanauj ..	2	..	..	..
Etawah ..	47. Etawah ..	44	8	8	8
Cawnpore ..	48. Cawnpore ..	149	14	..	..
Fatehpur ..	49. Fatehpur ..	13	1	..	..
Allahabad ..	50. Allahabad ..	116	31	2	2
Total, Allahabad division		381	68	10	10
Jhansi ..	51. Jhansi ..	34	4	2	2
	52. Mau ..	7	..	..	..
	53. Lalitpur ..	10	1	..	..
Jalaun ..	54. Jalaun (Orai)	4	..	4	4
	55. Kalpi ..	6	1	..	..
	56. Kunch ..	27	..	6	6
Banda-Hamirpur	57. Banda ..	25	2	9	9
Total, Jhansi division		113	8	21	21
Benares ..	58. Benares ..	162	9	6	6
Mirzapur ..	59. Mirzapur ..	33	5	4	4
Jaunpur ..	60. Jaunpur ..	29	13	3	3
Ghazipur ..	61. Ghazipur ..	36	10	2	2
Ballia ..	62. Ballia ..	..	..	..	..
Total, Benares division		260	37	15	15
Gorakhpur-Bastl.	63. Gorakhpur ..	40	6	..	..
Azamgarh ..	64. Azamgarh ..	8	1	..	..
Total, Gorakhpur division		48	7	..	..
Naini Tal ..	65. Naini Tal ..	8	1	..	..
	66. Kashipur ..	16	2	8	8
Almora-Garhwal ..	67. Almora ..	4	..	2	2
Total, Kumaun division		28	3	10	10

District.	Municipal Board.	Mixed schools.		Islamia schools.	
		Total number of teachers.	Number of Muham-madan teachers.	Total number of teachers.	Number of Muham-madan teachers.
Lucknow	68. Lucknow ..	243	81	..	..
Unao	69. Unao ..	11	2	..	..
Rae Bareli	70. Rae Bareli ..	..	..	..	..
Sitapur	71. Sitapur ..	26	7	..	..
	72. Khairabad ..	7	1	..	..
Hardoi	73. Hardoi ..	15	1	4	4
	74. Shahabad ..	..	..	3	3
	75. Sandila ..	11	8	..	..
Kheri	76. Lakhimpur (Kheri) ..	7	3	3	3
Total, Lucknow division ..		320	107	10	10
Fyzabad	77. Fyzabad ..	35	4	3	3
	78. Tanda ..	15	6	14	14
Gonda	79. Gonda ..	8	4	4	4
	80. Balrampur ..	14	4	..	..
Bahraich	81. Bahraich ..	22	14	7	7
Sultanpur	82. Sultanpur ..	12	4	..	..
Partabgarh	83. Partabgarh ..	7	2	1	1
Bara Banki	84. Nawabganj (Bara Banki) ..	9	4	..	..
Total, Fyzabad division ..		122	42	29	29
Total, United Provinces ..		2,106	560	204	204

Statement showing the total number of teachers and the number of Muhammadan teachers in mixed and Islamia schools maintained by District Boards.

District Board.	Mixed schools.		Islamia schools.	
	Total number of teachers.	Number of Muham-madan teachers.	Total number of teachers.	Number of Muham-madan teachers.
Dehra Dun ..	138	6	1	1
Saharanpur ..	378	148	27	26
Muzaffarnagar ..	375	20	39	39
Meerut ..	370	96	89	83
Bulandshahr ..	510	45	13	13
Total, Meerut division ..	2,271	314	169	168
Aligarh ..	486	28	17	17
Muttra ..	380	8	12	12
Agra ..	552	8	10	10
Mainpuri ..	430	8	25	25
Etab ..	411	24	4	4
Total, Agra division ..	2,249	76	68	68

District Board.	Mixed schools.		Islamia schools.	
	Total number of teachers.	Number of Muham-madan teachers.	Total number of teachers.	Number of Muham-madan teachers.
Bareilly	329	13	18	18
Bijnor	339	54	30	30
Budaun	392	106	22	22
Moradabad	507	145	62	62
Shahjahanpur	436	31	37	37
Pilibhit	221	38	4	4
Total, Rohilkhand division ..	2,274	431	173	173
Farrukhabad	643	40	24	24
Etawah	555	18	21	21
Cawnpore	756	11	14	14
Fatehpur	453	36	18	18
Allahabad	901	173	17	17
Total, Allahabad division ..	3,308	273	94	94
Banda	498	25	10	10
Hamirpur	435	51	5	5
Jhansi	519	22	17	17
Jalaun	461	20	19	19
Total, Jhansi division ..	1,913	118	51	51
Benares	950	57	30	30
Mirzapur	499	20	14	14
Ghazipur	689	37	41	41
Jaunpur	912	45	37	37
Ballia	854	12	50	50
Total, Benares division ..	3,904	171	222	222
Gorakhpur	1,476	47	33	33
Basti	1,081	135	16	16
Azamgarh	983	82	41	41
Total, Gorakhpur division ..	3,540	264	90	90
Naini Tal	220	12	13	13
Almora	583	..	5	5
Garhwal	9	2	4	4
Total, Kumaun division ..	762	14	22	22
Lucknow	472	104	18	18
Unao	423	60	8	8
Rae Bareilly	708	115	37	37
Sitapur	582	74	34	34
Hardoi	754	114	23	23
Kheri	346	60	7	7
Total, Lucknow division ..	3,235	527	127	127
Fyzabad	570	94	3	3
Gonda	490	124	8	8
Bahraich	485	101	44	44
Sultanpur	475	57	24	24
Partabgarh	297	76	11	11
Bara Banki	415	100	23	23
Total, Fyzabad division ..	2,962	552	118	118
Total, United Provinces ..	26,418	2,740	1,184	1,133

APPENDIX G.

(See page 147 supra).

Statement referred to in the answer to unstarred question No. 26 asked by KHAN BAHADUR HAFIZ HIDAYAT HUSAIN, on June 29, 1928.

Statement showing number of Hindu and Muhammadan scholars in each district on March 31, 1925, in the schools maintained and aided by the district boards.

District.	Hindus.		Muhammadans.	
	Males.	Females.	Males.	Females.
PROVINCE OF AGRA.				
Dehra Dun	8,468	166	564	..
Saharanpur	11,27	146	5,285	149
Muzaffaranpur	12,913	911	8,580	118
Meerut	29,660	1,926	5,950	382
Bulandshahr	15,414	666	2,782	1
Total, Meerut division ..	72,877	3,815	18,161	650
Allgarh	14,135	1,948	1,654	112
Muttra	12,374	266	802	5
Agra	17,476	1,297	1,279	9
Mainpuri	12,957	678	1,180	116
Etah	11,655	717	1,358	40
Total, Agra division ..	68,597	4,906	6,373	282
Barilly	7,775	596	3,189	174
Bijnor	10,382	983	4,577	169
Budaun	10,123	853	2,783	134
Moradshad	11,624	1,668	5,131	551
Shajahanpur	14,715	324	2,692	127
Pilibhit	6,844	366	1,478	62
Total, Rohilkhand division ..	60,423	4,785	19,800	1,217
Farrukhabad	16,237	1,190	2,384	21
Etawah	15,965	1,803	1,034	78
Oawnpore	21,982	1,071	1,703	73
Fatehpur	12,810	176	2,132	123
Allahabad	24,371	867	5,451	602
Total, Allahabad division ..	10,871	4,607	12,654	897
Banda	18,374	432	1,984	80
Hamirpur	10,272	662	1,450	84
Jhansi	18,894	450	901	102
Jalaun	10,599	824	958	60
Total, Jhansi division ..	47,639	2,368	4,668	332
Benares	26,627	218	2,282	104
Mirzapur	14,286	838	1,274	73
Jaunpur	29,800	920	4,479	199
Ghazipur	18,497	460	3,658	174
Ballia	24,948	279	3,668	12
Total, Benares division ..	1,18,668	2,225	15,266	561

District.	Hindus.		Muhammadans.	
	Males.	Females.	Males.	Females.
Gorakhpur	49,835	1,835	6,012	315
Basti	30,456	718	7,665	322
Asamgarh	25,086	1,463	5,903	235
Total, Gorakhpur division ..	1,05,377	4,051	19,580	872
Naini Tal	16,309	190	120	56
Almora	14,577	352	141	8
Garhwal	6,147	174	756	6
Total, Kumaun division ..	37,033	716	1,017	70
Lucknow	12,547	241	2,816	262
Unao	12,531	322	1,916	33
Rae Bareilly	16,396	225	3,308	85
Sitapur	14,333	452	2,354	56
Hardoi	20,009	1,433	3,346	237
Kheri	9,167	656	1,847	137
Total, Lucknow division ..	85,383	3,329	16,037	860
Fyzabad	16,170	468	3,385	199
Gonda	14,447	720	4,443	60
Bahraich	11,773	227	4,243	115
Sultanpur	13,429	317	3,697	323
Partabgarh	15,270	137	3,130	207
Bara Banki	10,331	527	4,320	353
Total, Fyzabad division ..	81,970	2,231	23,624	1,262
Total, United Provinces ..	763,333	33,033	137,220	7,024

APPENDIX H.

(See page 148 *supra*).

Notification referred to in the answer to starred question No. 2 asked by KHAN BAHADUR HAFIZ Hidayat Husain, on June 30, 1926.

January 8, 1926.

No. 28G/XV—207. It is proposed by the Local Government to award six scholarships for study in the United Kingdom as follows:—

- (1) If a suitable candidate is available, one scholarship of £300 plus £45 on account of bonus per annum tenable for two years by an Indian lady graduate to enable her to qualify as a teacher.
- (2) Three scholarships each of £250 plus £40 on account of bonus per annum tenable for two years by male graduates for training in Western methods of education or for the study of some specific subject taught in a Training College, Intermediate College or High school.
- (3) One scholarship of £250 plus £40 on account of bonus per annum tenable for two years by a distinguished graduate

(male) in Arts or Science of the Allahabad University for the study of such specific subject as the University may decide.

- (4) One scholarship of £250 plus £40 on account of bonus per annum tenable for two years by a distinguished graduate (male) in Arts or Science of the Lucknow University for the study of such specific subject as the University may decide.

The amount of bonus will be liable to reduction at any time during the tenure of the scholarship in case such reduction is considered necessary by the High Commissioner.

2. Applications for scholarships Nos. (1) and (2) should be submitted to the Director of Public Instruction, United Provinces, Allahabad, and those for scholarships Nos. (3) and (4) to the Registrars, University of Allahabad, Allahabad and Lucknow University, Lucknow, respectively. Only candidates who possess actual teaching experience are eligible for scholarships Nos. (1) and (2) University teachers and gazetted Government servants who have been confirmed are not eligible for any of the scholarships. The applications should reach the officers concerned on or before February 7, 1926, and should contain information detailed in the schedules A and B annexed. Applicants are warned that if full information is not furnished their applications will not be considered.

Any attempt on the part of a candidate to enlist support for his/her application from persons of influence will disqualify him/her for selection. Spontaneous recommendations from persons who are not themselves acquainted with the candidate's work at school or University or otherwise will be disregarded.

3. Applicants for these scholarships must give an undertaking that they will devote themselves to the service of education in a Government or private institution in the United Provinces for a minimum period of seven years, and will be required to execute a bond undertaking to repay the amount of the scholarships if they fail to return to India when instructed by the High Commissioner to do so.

4. The candidates selected for the scholarship will be required to reach London by September 1, 1926. They will be required to lodge with the High Commissioner for India, before their arrival in London the sum of £40 for initial expenses. They will be provided with a free second class* passage to London and also with a return passage if they complete the full period of residence or are compelled by sickness to return within that period. The candidates selected will not be allowed to travel overland *via* Marseilles except at their own expense. They will pay their own travelling expenses in India and the United Kingdom. On arrival in the United Kingdom they will be expected to fall in with the arrangements for their studies made for them and will be required to conform to such rules as the High Commissioner for India may make in this behalf. Scholarships will be tenable from the date on which the candidates report their arrival in England until August 31, 1928, or the date of departure from England for India with the concurrence of the High Commissioner, whichever date is earlier.

5. The scholarships will be awarded only if the provision for the purpose is finally passed for inclusion in the budget for 1926-27.

1. Full name
2. Date of birth
3. Father's name, address and profession.
4. Race or caste
5. Places of education (including colleges and schools.)
6. Examinations passed.
(The division, the year of passing the examination and name of the university should be stated.)
7. Subjects taken and honours (if any) obtained in the Degree, Intermediate Final Examinations.
8. Aim and subject of scholarship.
(For research scholars precise subject of study must be given).
9. Character testimonials
10. Medical certificate.
(The medical certificate should be sent in original and should state that the applicant is physically fit to undergo a course of study abroad. The certificate of any medical officer lower in status than a Civil Surgeon will not be accepted.)

- 1. Place of birth
2. Length of residence in the United Provinces.
3. Statement regarding the applicant's circumstances.
4. Statement of certificates and testimonials attached to the application. These should be duly attested and signed by a gazetted officer.

5. A written undertaking that if awarded a scholarship the applicant will devote himself or herself exclusively during the tenure of the scholarship to the study of the subject for which the scholarship is granted.

6. Name of the institution or university at which the candidate desires to study in Great Britain.

* In the case of lady candidates a certificate in the prescribed form from any registered medical woman, preferably one in Government employ, will be accepted.

Signature and full address of the applicant.

By order,

JAGDISH PRASAD,

Secy. to Govt., United Provinces.

APPENDIX I.

(See page 156 supra.)

Statement referred to in the answer to unstarred question No. 1, asked by KHAN BAHADUR HAFIZ Hidayat Husain, on June 30, 1926.

Statement showing the number of Hindus and Muslims appointed to the Subordinate Agricultural Service during the past three years.

Year.	Number appointed.		Total.
	Hindus.	Muslims.	
1923	..	..	..
1924	18	..	18
1925	8	3	11
Total	21	3	24

APPENDIX J.

(See page 158 supra.)

Copy of G. O. No. 707/VII—19, dated May 5, 1926, to the Registrar, High Court, Allahabad, and Registrar, Chief Court, Oudh, referred to in answer to unstarred question No. 14 for June 30, 1926.

With reference to the correspondence ending with the Court's letter No. 8216/147, dated July 22, 1925, I am directed to say that the 198/II—14-21, dated July 9, 1925,

Governor in Council is pleased to declare pensionable, with effect from April, 1, 1926, the posts of copyists in subordinate civil courts in the United Provinces.

2. I am to observe that the concession shall not have retrospective effect, i.e., the service of copyists prior to April 1, 1926, will not count for pension. The men who retire during the next ten years will not be entitled to any pension, but will receive a gratuity equal to one month's pay for every completed year of approved pensionable service.

3. As no such copyist will have completed one year's pensionable service during the year 1926-27, no provision has been made in the budget for the current year.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Friday, July 2, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m., Hon'ble
Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(102)

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Sy'id Khan.
Hon'ble Rai Bajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. F. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad Ejaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Mr. H. O. Desanges.
Mr. H. David.
Babu Chem Oband.
Lala Kishan Lal.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksona.
Babu Damodar Das
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Pandit Nanak Chand.
Lala Babu Lal.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Kharagjit Misra.
Raja Suryopal Singh.
Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.

Pandit Jhanni Lal Pande.
Thakur Har Prasad Singh.
Thakur Keshava Chandra Singh Chaudhri.
Lieut. Raja Durga Narayan Singh.
Raj. Narayan Pratap Singh.
Pandit Sri Krishna Dutt Paliwal.
Bibu Parsidh Narayan Anad
Pandit Yajna Narayan Upadhya.
Raja Sri Krishna Dutt Dubo.
Rai Sahib Babu Dip Narayan Roy
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan
Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Raja Shankar Sahai.
Dr. Jaikaran Nath Misra.
Rai Bahadur Thakur Maschal Singh.
Babu Sit. Ram.
Kunwar Krishna Pratap Singh.
Mr. Muhammad Aslam Saifi.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Eusein.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din
Khan Bahadur Maulvi Muhammad Fazl-ur-
Bahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad
Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Mr. St. George H. S. Jackson.
Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Meh-
rotra.
Raja Shambhu Dayal.
Lieut. Raja Shaikh Imtias Rasul Khan.
Raja Jagannath Baksh Singh.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Dr. Ganesh Prasad.

QUESTIONS AND ANSWERS.

STARRED QUESTIONS

HINDI BOOK—"VICHITRA JIWAN."

*1. **Khan Bahadur Shaikh Masud-uz-Zaman** : (a) Will the Government be pleased to say with reference to my question No. 56, dated June 29, 1926, what is the book referred to therein about?

(b) Does this book contain remarks against the Arabian Prophet? If so, have the remarks caused great annoyance to the Muhammadan public and does great agitation prevail among them?

(c) Has the Government taken any action in the matter?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : A prosecution has been ordered in this case.

*2 and *3. **Khan Bahadur Shaikh Masud-uz-Zaman** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

MR. DHAWOLAY, DEPUTY COLLECTOR, JHANSI.

*4. **Khan Bahadur Shaikh Masud-uz-Zaman** : (a) How long has Mr. Dhawolay, deputy collector, been in Jhansi district?

(b) Is it a fact that Mr. Dhawolay is very closely related to certain families of Jhansi?

(c) Is there any special reason for his long retention at Jhansi?

Hon'ble Sir Sam O'Donnell : (a) Since November 27, 1919.

(b) The Government have no information.

(c) The Commissioner specially asked for his retention in the district last year.

Pandit Brijnandan Prasad Misra : Did the Commissioner give any reasons?

Hon'ble Sir Sam O'Donnell : I do not remember but I suppose he said that he was a capable officer with local knowledge.

Khan Bahadur Shaikh Masud-uz-Zaman : Has the Commissioner asked for further retention this year also?

Hon'ble Sir Sam O'Donnell : Not as far as I am aware.

MUNSHI BABU PRASAD, INSPECTOR OF POLICE, JHANSI.

*5 **Khan Bahadur Shaikh Masud-uz-Zaman** : How long has Munshi Babu Prasad, inspector of police, been in Jhansi?

Is there any special reason for his very long retention at Jhansi?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : (a) Since May, 1902.

(b) Yes. The special reasons for Munshi Babu Prasad's retention at Jhansi are his knowledge of dacoity in the Jhansi division and of the surrounding States and his particular aptitude for dealing with dacoity in the district.

Pandit Brijnandan Prasad Misra : Why has he not been taken in the special dacoity police if he has got special qualifications for that work?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Most probably he was thought particularly fit for that locality.

Khan Bahadur Shaikh Masud-uz-Zaman : Is it a fact that his home is in a district adjoining Jhansi and very close to Jhansi ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : I am not aware whether his home is somewhere near Jhansi.

Dr. Shafa'at Ahmad Khan : Will the Government inquire ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : I do not see any reason for inquiry, unless the honourable member says that it is in the Jhansi district.

*6 to *14. **Khan Bahadur Shaikh Masud-uz-Zaman :** [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

ALBERT PRESS, HAMIRPUR.

*15. **Khan Bahadur Shaikh Masud-uz-Zaman :** (a) Was the Albert Press opened at Hamirpur for the sole purpose of doing the work in connexion with the district aman (*shanti*) *sabha* at the request of the executive of the *sabha* and with the approval of the district authorities ?

(b) Was it a paying job ? Did the *sabha* subscribe anything towards the funds of the press ?

(c) Did the publicity commissioner approve the work of the press ?

(d) Does the press still exist at Hamirpur ?

(e) Is the work of printing the electoral rolls of the Council, Assembly or the local boards of the district given to the Albert Press ?

(f) If not, who is now given the work of Hamirpur district and what are his special claims ?

Hon'ble Sir Sam O'Donnell : (a) No.

(b) Apparently not. The Government are informed that this press failed to publish the *sabha's* publication either punctually or regularly, and the subscribers therefore declined to pay. The printer complained to the district magistrate who found that the objections were sustained.

(c) No.

(d) No.

(e) No.

(f) The printing of the Hamirpur district electoral rolls has been given to the Sahitya Press in Jhansi. Sixteen presses applied for the contract and samples were called for. The work and terms of the Sahitya Press were found to be easily the best.

INSPECTIONS BY SUPERINTENDING ENGINEERS OF CANALS.

*16 **Khan Bahadur Shaikh Masud-uz-Zaman :** (a) Are there any departmental rules regulating the inspections to be done by the superintending Engineers of the canals ?

(b) How long is it since the Superintending Engineer of Canals, IV circle, has done the inspection of Ken and Betwa Canals division ?

(c) What are the last dates of his inspections of Banda and Orai canals?

Hon'ble Sir Sam O'Donnell: (a) The duties of Superintending Engineers are defined in paragraphs 64 and 65 of the Public Works Department Code.

(b) The Ken canal division was last inspected on March 15, and Betwa Canal division on April 15, 1926. Both divisions were also inspected twice before in the last cold weather.

(c) The honourable member is referred to the answer to part (b).

SUBORDINATE STAFF OF BUNDELKHAND CANALS.

*17. **Khan Bahadur Shaikh Masud-uz-Zaman:** Did not Government make inquiries into the cases of hardships of the subordinate staff of Bundelkhand canals, as promised on page 643 of Council proceedings, volume XXVIII of March 22, 1926, in reply to my motion of reduction of Rs. 10 from the budget of running canals for the year 1926-27 and with what results?

Hon'ble Sir Sam O'Donnell: Yes, but the inquiry is not complete yet.

INDIAN FINANCE DEPARTMENT EXAMINATION.

*18. **Lieut. Raja Durga Narayan Singh:** Will the Government be pleased to state how many candidates applied for permission to sit for the Indian Finance Department examination this year? How many of these were (1) Hindus, (2) Muslims, and (3) others? How many of each category have been rejected?

Hon'ble Sir Sam O'Donnell: It is clear from the nature of these questions that the honourable member is not acquainted with the existing procedure. This is as follows.

The Local Government has the right to nominate a certain number of persons who desire to obtain appointments in the Indian Audit and Accounts department. The Government of India, on receipt of the Local Government's recommendations, enter the names of the nominees in a list of candidates for the department. When an examination is to be held, the Government of India select, with regard to the number of vacancies available, a certain number of persons from that list, whom they invite to sit for the examination. The function of the Local Government is restricted, therefore, to—

(1) receiving the names of applicants;

(2) selecting from those applicants, persons to be recommended as nominees to the Government of India.

Once they have done this, they have no further concern with the matter at all. In actual practice, the original applications are sent to the Director of Public Instruction. Out of the total number of applicants, he selects a certain number, usually from twelve to fifteen, whom he regards as best qualified for appointment. The persons thus selected are desired to appear before a selection board, which consists of the Director of Audit (late Accountant-General), certain non-official Indian gentlemen, the Director of Public Instruction, and the Finance Secretary as President. Out of the number interviewed the board selects a certain number to be recommended as the Government's nominees to

the Government of India. There is no restriction to the number of nominees. It seldom, however, exceeds four or five. In the current year it was seven. It follows from these general remarks that the Government cannot answer the questions in the form in which they are put. The best information they can give is as follows :—

Question No. 18.—The total number who applied were as follows :—

Hindus 39, Muslims 5, others none. The number selected for interview by the board were Hindus 10, Muslims 2, others none. The number nominated by the board were Hindus 5, Muslims 2, others none.

*19. **Lieut. Raja Durga Narayan Singh** : Will the Government be pleased to state the reasons for which such candidates are generally rejected ?

Hon'ble Sir Sam O'Donnell : A knowledge of mathematics is, under the rules, essential. Apart from that, persons are selected to appear before the board on the basis of their academic qualifications, whilst nominees are selected by the board on the basis of their academic qualifications, partly of other personal qualifications.

Pandit Brijnandan Prasad Misra : Who were the Indian gentlemen that constituted this board of selection ?

Hon'ble Sir Sam O'Donnell : They were members of this Council, but I do not know their names.

Lieut. Raja Durga Narayan Singh : What was their number ?

Hon'ble Sir Sam O'Donnell : I do not know how many non-official members there were on the board.

*20. **Lieut. Raja Durga Narayan Singh** : Is it a fact that among those rejected is one Mr. Ratish Mohan Agarwal, an M.A., LL.B. of the Allahabad University ? If so, why ?

Is it a fact that he had recently been to England for further studies ?

Hon'ble Sir Sam. O'Donnell : (a) Yes he had studied mathematics only up to the Intermediate stage and in other respects was not so well qualified as several other candidates.

(b) Yes.

*21. **Lieut. Raja Durga Narayan Singh** : Is the examination a competitive one and are candidates interviewed by the selection board prior to their being approved ?

Hon'ble Sir Sam O'Donnell : The examination held by the Government of India is competitive. The other part of the question has already been answered.

ARYA SAMAJ PROCESSION, MUSSOORIE.

*22. **Rai Jagdish Prasad Sahib** : (a) Is it a fact that a few months ago an Arya Samaj procession was not allowed to pass along a certain road in Mussoorie by the district authorities ?

(b) Is it a fact that religious processions of other communities have been allowed and are still allowed to pass along the same road ?

(c) Will the Government be pleased to give reasons why the said Arya Samaj procession was not allowed to pass along that road ?

Hon'ble Sir Sam O'Donnell : (a) Yes.

(b) The honourable member is referred to the answer given to starred question No. 56 for December 19, 1925.

(c) The honourable member is referred to the answer given to starred question No. 59 for December 19, 1925.

(Starred questions Nos. 56 and 59 asked on December 19, 1925, and the answers given to them.)

QUESTION.

*56. (a) Is it a fact that at Mussoorie, Hindur, Muslims, Jains and Sikhs have their processions on the occasions of their festivals and anniversaries?

(b) Is it also a fact that most of these annual processions have begun in Mussoorie during recent years?

ANSWER.

(a) Yes.

(b) Jain processions have been taken out since 1922 and Sikh processions since 1921. The *Janam Ashtami* procession has been taken out since 1919. Other processions, such as the *Ram Lila* and the *Muharram*, have been taken out for many years.

QUESTION.

*59. On what grounds did the District Magistrate of Dohra Dun prohibit the annual Arya Samaj *Nagar Kirtan* procession at Mussoorie this year?

ANSWER.

Partially because of the congested state of the narrow Mussoorie roads, but mainly because the feelings between Muhammadans and Arya Samajists at Mussoorie were very much strained at the moment and the public peace was endangered. Protests against the proposed Arya Samaj celebrations had been received from two Muhammadan communities. Earlier in the year the District Magistrate had refused permission for a Muhammadan procession on the same grounds.

*23 **Rai Jagdish Prasad Sahib:** [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

REVENUE FROM THE PROVINCE OF AGRA AND OUDH.

*24. **Rai Jagdish Prasad Sahib:** (a) Is it a fact that the Secretary of the Capital Retention Committee, Allahabad, requested the Government to furnish information relating to the revenue from and the expenditure upon the province of Agra and the province of Oudh separately?

(b) If so, what reply, if any, has the Government given in the matter?

(c) If no information has yet been given, will the Government be now pleased to lay on the table a detailed statement showing the average for the last five years being taken separately for the thirty-six districts of the province of Agra and for Oudh relating to the following heads:—

(i) the aggregate revenue;

(ii) the aggregate expenditure;

- (iii) the incidence of taxation (a) including and (b) excluding land revenue;
- (iv) the incidence of assessment on land;
- (v) the aggregate expenditure; and
- (vi) the rate of expenditure per head of the population?

Hon'ble Sir Sam. O'Donnell : (a) Yes.

(b) The Government have replied that the figures are not available and could not be obtained without heavy expenditure which the Government are not prepared to undertake.

(c) For the reasons given above, the Government are unable to furnish the information.

- *25. } **Rao Sahib Abdul Hameed Khan :** [*Postponed at the request*
- *26. } *of Government till the first day of the meeting after the*
- *27. } *Muharram holidays.*]

DOCUMENTS REGISTERED IN CAWNPORE AND LUCKNOW.

*28. **Khan Bahadur Hafiz Hidayat Husain :** What is the average number of documents registered every year in Cawnpore city registration sub-division and Lucknow city registration sub-division?

Are there two sub-registrars working in Lucknow sub-registration office? Do Government contemplate appointing an extra sub-registrar to cope with Cawnpore work?

Hon'ble Nawab Muhammad Yusuf : The average number of documents registered in Lucknow and Cawnpore is 4,955 and 3,147, respectively.

Yes. No necessity for such an arrangement in the Cawnpore office has yet been felt.

COMMITTEE TO REGISTER MUSLIM MARRIAGES AND DIVORCES.

*29. **Khan Bahadur Hafiz Hidayat Husain :** Are the Government yet in a position to announce the personnel of the committee to consider the question of compulsory registration of Muslim marriages and divorces?

Hon'ble Nawab Muhammad Yusuf : Yes. The personnel of the committee was published in the Gazette of June 19, 1926.

*30. **Khan Bahadur Hafiz Hidayat Husain :** [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

ELECTRIC FANS IN COURTS AND PUBLIC INSTITUTIONS AT ALLAHABAD.

*31. **Mr. H. David :** Is the Government aware that of all the courts and similar public institutions at Allahabad, only the collectorate is denied the use and advantages of electric fans?

Hon'ble Sir Sam O'Donnell : Yes, the Government are aware that there are no electric fans in the Allahabad collectorate.

Mr. H. David : Why has the Collector's office been punished by not being supplied with electric fans?

Hon'ble Sir Sam O'Donnell: There is no question of punishment. There is a certain amount of money available for allotment every year, and perhaps the Collector of Allahabad did not press the matter.

(Hon'ble Sir Sam O'Donnell had not finished replying when Mr. David interfered by putting another question)

Hon'ble the President: The honourable member should take his seat when the Hon'ble the Finance Member is replying.

Mr. H. David: Do the Government intend to remove this serious inconvenience?

Hon'ble Sir Sam O'Donnell: It may be possible to do so out of the annual allotment provided for next year; I cannot say yet.

Hon'ble the President: Only one member at a time can be in possession of the House. After a supplementary question has been put the honourable member should resume his seat and allow Government to give a reply. When that member is replying the member asking the question should take his seat immediately.

Mr. Mukandi Lal: I wish to bring to the notice of the Chair that Rai Bahadur Lala Sita Ram, in spite of having broken a chair yesterday, has been given another chair today.

Hon'ble the President: Rai Bahadur Lala Sita Ram is not on the floor of the House. This is not such a question as to be put on the floor of the House. The honourable member should have full regard of the decency and dignity of the place.

*32. **Mr. H. David:** Is it a fact that for the last five years the heat temperature at Allahabad has been highest in the province?

Hon'ble Sir Sam O'Donnell: Government have no information.

*33. **Mr. H. David:** Do the collectorate courts close for summer vacation like the High and the Chief Courts and the district civil courts?

Hon'ble Sir Sam O'Donnell: No.

*34. } **Mr. H. David:** [*Postponed at the request of Government*
 *35. } *until the first day of the meeting after the Muharram holidays.*]

COMPETITIVE EXAMINATION FOR DEPUTY COLLECTORSHIPS.

*36. **Mr. H. David:** Will the Government be pleased to explain the reason why in the recent notification for competitive examination for deputy collectorships one appointment is not reserved for a Christian just as for a Muhammadan?

Hon'ble Sir Sam O'Donnell: Christians are included in the non-Muslim competitors.

PROPORTION OF LANDHOLDERS TO TENANTS IN THE AGRA PROVINCE.

*37. **Mr. H. David:** (a) What is the proportion of landholders to tenants in the Agra province?

(b) What is the quantity of all kinds of land in the occupancy of landholders in the Agra province?

(c) What is the quantity of all kinds of land in the occupancy of the tenants in the Agra province?

Hon'ble Sir Sam O'Donnell: (a) The proportion of landlords to tenants in 1919 was one to five. It is still about the same now.

(b) The land in the cultivatory occupation of landholders was, in 1924-25, 5,865,504 acres

(c) The land held by tenants (excluding sub-tenants of *sir*) was, in 1924-25, 22,364,252 acres.

* 38 to * 41. **Mr H. David:** [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

DEPUTY INSPECTORS OF SCHOOLS.

* 42. **Mr. H. David:** (1) What is the exact number of deputy inspectors of schools in the United Provinces?

(2) How many of these inspectorships are held respectively by (a) Hindus, (b) Muhammadans, and (c) Christians?

Hon'ble Rai Rajeshwar Bali: The honourable member is referred to the answer given on March 27, 1926, to part (i) of unstarred question No. 8.

[*Copy of unstarred question No 8 (i) asked on March 27, 1926, and the reply given thereto.*]

QUESTION.

Will the Government be pleased to state (i) the total number of (a) inspectors of schools, (b) assistant inspectors of schools, (c) deputy inspectors of schools, (d) sub-deputy inspectors of schools, and the number of Hindus, Muslims and Indian Christians in each class?

ANSWER.

		Total No.	Hindus.	Muham- madans.	Indian Christians.
(i) Inspectors of schools	..	8	..	2	..
Assistant inspectors	..	10	7	3	..
Deputy inspectors	..	48	41	6	1
Sub-deputy inspectors	..	105	180	64	1

* 43 to * 46. **Rao Sahib Abdul Hameed Khan:** [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

GOVERNMENT PLEADERS AND ADVOCATES.

* 47. **Rao Sahib Abdul Hameed Khan:** How many Government pleaders and how many Government advocates are there in each district of these provinces? How many of them in each district belong to each community?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: A statement is laid upon the table,

(See Appendix A, page 271)

* 48. } **Rao Sahib Abdul Hameed Khan;** [*Postponed at the request*
 of Government till the first day of the meeting after the
 * 49. } Muharram holidays.]

TREASURY OFFICERS.

*50. **Khan Bahadur Hafiz Hidayat Husain** : Are Government aware that Provincial Service officers alone are employed for treasury work in all the districts of the province?

Hon'ble Sir Sam O'Donnell : Government are aware that treasury officers are almost deputy collectors.

*51. **Khan Bahadur Hafiz Hidayat Husain** : Are Government also aware that as their line is different, these officers try soon to get on to the proper magisterial duties and for the time they do treasury work they have no incentive to get thoroughly acquainted with codes and manuals of accounts?

Hon'ble Sir Sam O'Donnell : Government cannot subscribe to statements so sweeping as those made in this question. In a large sense, deputy collectors dislike treasury work; but Government have no reason to believe that a deputy collector when appointed a treasury officer neglects to study the codes and manuals that govern his duties.

*52. **Khan Bahadur Hafiz Hidayat Husain** : Do Government contemplate to appoint whole-time treasury officers particularly at stations where there is considerable treasury work, e.g., Allahabad, Lucknow, Cawnpore, Agra, etc.?

Hon'ble Sir Sam O'Donnell : Not at present.

UNSTARRED QUESTIONS.

1 to 5. **Babu Narayan Prasad Arora** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

6 to 11. **Lieut. Raja Durga Narayan Singh** ; [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

AGRA TENANCY BILL.

CLAUSE 4.

"Sir" means,—

Definition of *sir*.

- (a) land recorded as *sir* of a proprietor or of a permanent tenure-holder in the last record-of-rights framed before the first day of January, 1902, and continuously so recorded since, or which but for error or omission would have been so continuously recorded;
- (b) land cultivated continuously for twelve years *before* the first day of January, 1902, by the proprietor or by the permanent tenure-holder *himself* with his own stock, or by his servants, or by hired labour;
- (c) land recognized by village custom as the special holding of a co-sharer, and treated as such in the distribution of profits or charges among the co-sharers;

- (d) land which at the commencement of *this Act* was being cultivated by the proprietor or permanent tenure-holder himself *with his own stock*, or by his servants, or by hired labour, and which was recorded as the *khudkasht* of the proprietor or permanent tenure-holder in the agricultural year immediately preceding the agricultural year in which *this Act* came into force;
- (dd) land acquired as *sir* by a landlord or permanent tenure-holder under section 42;
- (e) land which has been continuously cultivated by the proprietor or permanent tenure-holder himself *with his own stock*, or by his servants, or by hired labour for a period of ten years, commencing at any time after the commencement of *this Act*, and has, on the application of the proprietor or permanent tenure-holder, as the case may be, been declared and demarcated as the applicant's *sir* by the collector in accordance with the following provision.

The area of *sir* which may be acquired by a proprietor or permanent tenure-holder under clause (dd) or (e), as the case may be, when added to the area which is *already* the *sir* of the proprietor or permanent tenure-holder under clauses (a), (b), (c), (d), (dd) and (e) shall not exceed in the aggregate the following scale:—

If the cultivated area in the mahal owned by the proprietor or held by the permanent tenure-holder is not more than seventy acres.	Fifty per cent. of such area.
If such area is more than seventy but not more than two hundred acres.	Twenty-five to thirty-five per cent. of such area, as the collector may decide
If such area is more than two hundred but not more than six hundred acres.	Ten per cent. of such area.
If such area is more than six hundred acres.	Five per cent of such area.

Provided that a proprietor or permanent tenure-holder who exchanges *sir* for tenants' or other land whether voluntarily or under the order of a court, shall acquire the same right in the land which he receives as he had in the land which he gives in exchange.

"*Sir right*" means the sum of all the special rights conferred on *sir*-holders, by this Act and by the United Provinces Land Revenue Act of 1901, and includes the right to *exclusive* possession of the *sir* against co-sharers of the *sir*-holder in the proprietary right; subject to a liability to account for profits.

Babu Sangam Lal: I beg to move that clause 4 (d) be omitted. Sir, when the report of the Fremantle Committee was published and when I read it I saw no reason that this sub-clause should be omitted because the Bill had been drafted on the lines of the Oudh Rent Act and such a provision finds a place in that Act. But when the Government published the Bill after making some changes I thought that it would be better if some study be made as to the effect that the various provisions

[Babu Sangam Lal.]

of the Bill would produce in the province. The study of the various reports led me to the conclusion that this provision should not find a place in the Agra Tenancy Bill. If you refer, Sir, to the Revenue Administration report of the year 1924, you will find that when the Oudh Rent Act was passed, then the *sir* land was only 4·7 per cent. and the *khudkasht* land was about 3·7 per cent. Therefore the *sir* area was only 8·2 per cent. Now if you refer to the same report, you will find that the area held as *sir* is already 12 per cent. in the Province of Agra and the land held as *khudkasht* according to this clause is 8·4 per cent. So if this land becomes *sir* then the total area of *sir* becomes 20·4 per cent. and this does not include the area which has been recorded as *khudkasht* during the last two years; because the Council must be remembering that the Oudh Rent Act was passed as soon as the Bill was introduced; while the Agra Tenancy Bill was published in August 1924 and there was ample opportunity for filing ejectment suits. It might be said that ejectment suits have been stayed; but in those districts where the suits related to the area which was less than 30 per cent. of the total non-occupancy area suits have been decided, and in the select committee Mr. Burn gave us some figures which showed that the area from which ejectment had been ordered was about a lakh of acres. If we add to this clause (e), under which the *sir* area will be increased, and the amendment of the Hon'ble the Finance Member, proposing that in those villages where there are numerous small zamindars they will get *sir* according to their share, and will get the benefit of the scale according to which zamindars who own 30 acres can have 15 acres as their *sir*, we shall find, leaving out of account clause 4 (dd), as everyone is opposed to it, and taking into consideration only (d) and (e) and the amendment of the Finance Member, that it will result in *sir* being increased to not less than 25 per cent. in any case. This is a serious state of affairs. In Oudh, where the taluqdars conferred statutory rights on more than 75 per cent. of their tenants, they have got only 8 per cent. of their land as *sir*; while here, where statutory rights are conferred on tenants holding about 22 per cent. of the land, the *sir* area will be about 25 per cent. Now had it been even 20 per cent. I would not have very serious objection to that, but if you study further you will find that in more than one-third of the districts it will produce a very serious state, for, instance, if you take Meerut district, you will find that if you add the *sir* area and the *khudkasht* area the *sir* area will be 41·3 per cent. Now in a district 41·3 per cent. of the land being in the hands of a few people to whom this Act will not apply is a very serious matter. The Government themselves have objected to this in their note of dissent on the ground that if 4(d) is passed, it will lead to the evils of *nasrana* and rack-renting which it is the intention of this Act to remove. Meerut is not the only district. There are three other districts, Saharanpur, Azamgarh and Basti, where the *sir* area is between 30 and 40 per cent. In Basti it is 39·8. Then there are five other districts, Muzaffarnagar, Jalaun, Hamirpur, Banda and Gorakhpur where the *sir* area is between 25 and 30 per cent., and you will get an idea of the actual state of affairs from this, although percentages do not always show the true state of affairs, if you take the actual land in the Gorakhpur district, which will become *sir* on the passing of this Act according to clauses (a) to (d). It is about six lakhs of acres. The seriousness of the

situation will appear from this that the Government was opposed to the seven years' leases being exempted from the operation of this Bill which affected only ten lakhs of acres in the whole province, while as many as six lakhs of acres will become *sir* in only one district of Gorakhpur. There are five other districts where the *sir* area is more than 20 per cent., that is, between 20 and 25 per cent. Now it may be said that after all when the zamindars are conferring statutory rights it is but just and proper that they should get *sir* rights and that small zamindars as well as big require these lands for cultivation. We all know that *sir* land is sub-let to a very large extent while *khudkasht* land is in the actual cultivation of the zamindar. (Voice—"Question.")

Do I understand that *khudkasht* land is also sub-let—is that the meaning of the word "question"? (Voice of—"Sir land is actually cultivated by the zamindar in the majority of cases.")

So far as the reports are concerned they do not give figures. I would like to hear the Government members if they have got any figures to tell us how far the evil of sub-letting—it is called an evil by Government—is prevalent in the *sir* area. Now, Sir, I know of no province in this country where the *sir* area is as large as 20 or 25 per cent. And we are really reversing the policy which was adopted in 1901. Then it was thought that, in order to prevent the evil of sub-letting, it was necessary to restrict the area of *sir* and to facilitate leases of longer terms by means of seven years' leases and other provisions. Now we see that this has been reversed, and, while the object of this Bill is to prevent this evil of *nazrana* and rack-renting, with regard to about 20 per cent of the land, we are extending the area where this evil will be prevalent. In this connexion it should be remembered that it will not prevent the taking of more land for purpose of cultivation by the zamindars. If this sub-clause is passed, even then they can take any amount of land under their own cultivation, while *sir* will be sub-let. Is it right that in a province about one-fourth of the land should be tied up in the hands of a few people, say, not more than two lakhs? Is it right that, when there is so much competition for land in a province inhabited by two crores of people, one-fourth of the land should be tied up in the hands of two lakhs of persons? This is a matter which deserves the serious consideration of the Council. Now this is also opposed to the very conception of *sir*. Before 1901 only that land could become *sir* which had been cultivated for twelve years. But, according to this provision (d), the land which had been cultivated even for two years before the commencement of this Act, and has been recorded as *sir*, will also become *sir*.

Therefore, I request the Council to very seriously consider this matter, because the Government ten or fifteen years hence will come forward and say: "Well, the Act of 1926 has failed"—as this very Government said with regard to the Act of 1901—"25 per cent. of the land is in the hands of very few persons; the evils of *nazrana*, sub-letting and rack-renting prevail; the tenants are no better than serfs; therefore some protection must be given." The process of amending legislation will go on till God knows when it will be finally settled. I would have no objection if you agree to settle this problem once for all by dividing the land in the province into two classes; (1) land in the possession of occupancy tenants, and (2) land which is zamindars' demesne. Settle the problem once for all, so that the

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occupancy tenants may be in possession of their land and the zamindars may have land for their own purposes. When a fair proportion is thus fixed, the problem will be solved once for all and there will be peace in the province instead of having legislation every ten or fifteen years.

Pandit Nanak Chand: I regret to have to oppose the amendment of my friend Lala Sangam Lal. To be honest, we ought to be fair both to the landholders and to the tenants. My friend has taken great pains to compare the condition of the Agra province with those prevailing in the province of Oudh. But it appears that the fact that Agra province has got a very large number of small landholders, while this is not the case in the province of Oudh, has escaped his attention, or he has failed to give due weight to this fact. He has pointed out that the district of Meerut, which adjoins the district which I have the honour to represent in his House, has got not only a certain amount of *sir* area but has also got an extensive area recorded as *khudkasht*. The very fact that there is *khudkasht* area over and above *sir* area in Meerut district is an indication of the fact that the zamindars there have not enough land to cultivate for themselves. In all probability they are using their *sir* area and they are using additional land for purposes of their *khudkasht*.

More or less the same conditions prevail in the district from which I hail. I do not know if conditions are very different as between the western districts and the district which my honourable friend the mover of the amendment represents. He has pointed out that *sir* land is sub-let. I recognize that there are such cases. But it is within the competence of this Council to discourage sub-letting of *sir*. If the zamindars really and genuinely want land for their own cultivation they should be given the land in which rights have not accrued to tenants ungrudgingly and even be allowed to class it as *sir*. But if they want to reserve this area for sub-letting and rack-renting the actual cultivator, then it is up to the Government and to the representatives of the province who are assembled here to find out means whereby to discourage such sub-letting. Sub-letting may be unavoidable in certain instances, even in the case of *sir*. But such sub-letting need not extend over long periods. At present the landholders can take into their own cultivation any non-occupancy land which is vacated by a tenant or from which a tenant has been ejected. Thus they can extend their *khudkasht*, but in future when life-tenancy is conceded to the majority of the non-occupancy tenants it will not be so easy to take land for *khudkasht*. Besides if the *khudkasht* of the zamindar is not declared to be *sir* it is possible that the moment it is sub-let, even for one year, the tenant might claim the rights of a statutory tenant and the zamindar may find it impossible to get the land back for his cultivation. It is conceivable that sometimes a zamindar may have to sub-let his *khudkasht* area for unavoidable reasons. He might be prevented for a variety of reasons from cultivating it himself or under his own supervision by his own servants and with his own stock for one or two years. If for such reasons he has reluctantly to sub-let the land even for a year or two, he will be deprived for good of the chances of cultivating his own land. The honourable mover has pointed out that there is no other province where the *sir* area is as much as 20 or 25 per cent. I do not know whether the provinces which my friend has compared with our Agra province have got the same number of small landholders. He has stated that by extending

the *sir* area we would be reversing the policy of the Act of 1901. I recognize that this will be the effect of extending the *sir* area; but is it not just that zamindars who wish to cultivate their own land should have a prior claim to do so, particularly in lands in which no rights of tenants exist at present? The existing Act, however, has not given them this concession, and I know it for a fact that there are a number of small landholders who are in identically the same position as the ordinary tenants. It is not my intention to grant concessions to zamindars at the expense of tenants enjoying occupancy rights, but when a particular land is actually under the cultivation of a zamindar, I do not understand how the tenants will be adversely affected. I admit the force of the argument of my friend, the mover, when he says that this practice will lead to extensive sub-letting and the exaction of *nazrana* and rack-renting, but if the members of the zamindar party are honest and genuine in their demand, namely that they want the land for their own cultivation and for no other purpose, then they ought to join us in providing certain safeguards, which will make it difficult for zamindars to sub-let their *sir* land for unnecessarily long periods. If my friend, the honourable mover, will refer to clause 4 (e), he will find that zamindars can acquire *sir* land by continuous cultivation for a period of ten years, whereas under the existing Act a tenant can acquire occupancy rights by twelve years' continuous holding of the land.

There is a further reason why I oppose the motion of the honourable member for Allahabad. In the interest of agricultural improvement also it is necessary that some land should be left in the hands of zamindars. Barring few exceptions, they are men of far better resources than the tenants, and so if the zamindars take to cultivation, they will not only be benefiting themselves, but they will at the same time be setting a good example for the tenants to follow. For these reasons, I regret to have to oppose the amendment of my friend Babu Sangam Lal.

Rai Bahadur Thakur Mashal Singh: My honourable friend, who has just finished his speech, has regretted to oppose the amendment moved by the honourable member from Allahabad. I am delighted to oppose it. The amendment is mischievous. The zamindars are accused of sub-letting their *sir* land, while I submit that they are the absolute owners of their land. If they for the time being sub-let a portion of their *sir* land, there is no harm, because if a zamindar has got 100 bighas of land as *sir*, he can cultivate only one-fourth of that land himself and the rest can be cultivated by his sub-tenants. Suppose a zamindar has got three sons, and after some time they take to cultivation, then if this three-fourths of his *sir* land is not allowed to remain *sir*, there must be some provision for his sons and relations. For this reason, a small zamindar will be very hard hit if this amendment of my friend Babu Sangam Lal is accepted. We know by every-day experience that the land which is sub-let is after some time taken back by the zamindar, and the cultivation is extended by his relations and sons. There can be no reason why the zamindars should not be allowed to keep this land as their *sir*. It is a fallacious argument that a large area should not be allowed to be kept by the zamindars and the tenants should not be deprived of their statutory rights as regards that land. The fact is altogether lost sight of that the land really belongs to the zamindar: it does not belong to the tenant. Only so much of it as is not required by the zamindar is sub-let to the tenant.

[Rai Bahadur Thakur Mashal Singh.]

It will be quite unjust if the land which he requires for his own cultivation or for the cultivation of his sons and relatives in future should be taken away from him. Statutory rights are given to the tenants by the Bill so that the zamindars may have sufficient land in their possession. This right was given to the zamindars of Oudh when the Oudh Rent Amendment Bill was passed, and there is no reason why the same right should not be extended to the zamindars of Agra province. I agree with the concluding part of the speech of the honourable mover that if a reasonable amount of land is reserved for the zamindars, they should be glad to confer occupancy rights on the tenants. This is a good proposal, and I think that the zamindars will agree to it if a reasonable amount of land is reserved for them and for their heirs to avoid all this complicated method of succession and statutory rights. I think this proposal would be hailed by the zamindars of Agra and Oudh both. But there is no concrete amendment to that effect: so we cannot do anything at the present moment.

Khan Bahadur Maulvi Fasih-ud-din: I had no idea of making any speech on this occasion, as we want to be brief in our procedure in order to come to the more important sections. But I am sorry to say that there are certain reasons which compel me to break this golden principle of mine. We all know that the world is a cycle of changes, and for that reason a politician is not a denizen of this world if he does not change his views from time to time. The honourable member from Allahabad said in the beginning of his speech that he held one kind of views and he thought that this clause was quite a good one considering the fact that there was a similar clause in the Oudh Rent Act. But subsequently when he came to look into the various other clauses of this Act and when he looked into the figures of *sir* and *khudkasht* he changed his views and came to the conclusion that this sub-clause was most obnoxious. I wish to give only a few reasons and I hope that my honourable friend will not be under this misapprehension and will have to change his views for the third time. The first and foremost thing in connexion with this matter is that we should not forget that the wording of *sir* which now exists is the wording which existed a quarter of a century back; for the simple reason that the present Act II of 1901 prevents the accrual of further *sir* rights. Not only this, but on account of the numerous transfers that have taken place during the last 25 years, the area of *sir* which existed in 1900, i.e. in the beginning of this century, has undergone a very great diminution, and my estimate is that it has undergone a decrease of at least 30 per cent., because the sales that have taken place are not less than 40 per cent. For this reason I think it is but right and fair that this small addition of 7 or 8 per cent. of the area which is now regarded as *khudkasht* in the papers should be at once treated as *sir*. This is one of the main reasons in support of this clause. Our friend has forgotten that an increase in the *sir* area naturally leads to an increase in the habit of sub-letting and in rack-renting. The honourable mover said that he is not in possession of the figures and he has asked Government to supply figures as to the extent to which sub-letting of *sir* is carried out. I am rather surprised at this suggestion of his, because our honourable friend belongs to a party which should not appeal to the Government for any help of the kind. I deny, and I deny with all the emphasis at my command that there is any sub-letting of *sir* to a

considerable extent. It is my experience that sub-letting is done only in casual cases and for short periods, and that is unfavourable owing to economic causes.

The other point that my friend has raised is that in this province the *sir* is much more than in any other province. He has also quoted from one of my notes the figures about the percentage of small zamindars and the percentage is 86½. This is one of the main and chief reasons which led us to claim more *sir* and we claim this *sir* not for the sake of big landlords, but for the sake of small landlords. If my friend can show that in other provinces the percentage of small zamindars is equally large or is even about this, then his argument will have some force. The very fact that the small landlord preponderates in these provinces proves the necessity of an increase in the *sir* area. I think that this provision is just. We should not try to minimize the importance of *sir* as has been suggested by my friend the member for Hardoi. I know that blood is thicker than water, that party politics sometime leads us to do and say things which are not quite within the bounds of justice. But the art of advocacy should have a limit, and should not go beyond a limit which should lead gentlemen of the stamp of Mr. Nauak Chand to oppose a resolution of this kind.

Pandit Govind Ballabh Pant : I know that everyone of us here is conscious of the fact that the amendment moved by my friend the honourable member for Allahabad is being discussed only in an academic spirit, and there is hardly any chance of anybody dividing the Council successfully over it. He had, I think, utilized the time of the Council in order to give expression to his personal views over this question. So far as the party which I have the honour to represent here is concerned, since he made his speech I have received certain chits from some of my colleagues asking for leave to oppose the motion which he has moved. In the circumstances, I have reminded him of our minute of dissent and I have brought the fact to his notice that we have not referred to it here and I have prevailed upon him to withdraw it.

Babu Sangam Lal : I withdraw my motion.

Amendment by leave withdrawn.

CLAUSE 42.

42. (1) If a landlord or permanent tenure-holder, within two years of the commencement of this Act, makes an application to the collector to have land held by any statutory tenant acquired as his *sir*, the collector shall, if he is satisfied that the applicant has less *sir* than he is entitled to acquire under the scale laid down in section 4, order the acquisition of such land.

(2) No compensation, except such as could have been claimed by the tenant if he had been ejected as a non-occupancy tenant under the provisions of the Agra Tenancy Act, 1901, shall be payable by a landlord or permanent tenure-holder in respect of an acquisition under sub-section (1).

(3) Where a collector orders an acquisition under sub-section (1), he shall order the ejectment of the tenant from the holding or part thereof acquired, and such holding or part of a holding shall thereupon become the *sir* of the applicant.

Hon'ble Sir Sam O'Donnell: I move that the whole of clause 42 be deleted. The reasons for this amendment have been given in the minute of dissent signed by myself and the other official members. I can hardly hope that anything I can now say will bring conviction to those members who have read that minute and have not been convinced by it. But there may be, and I hope there are, many members whose minds are not entirely made up on this matter, at any rate in a sense adverse to my amendment, and it is to them that I appeal. We agree that the landlords should have the land which they reasonably require for their own cultivation. We recognize that this is a necessary accompaniment of the proposal to confer statutory rights on all non-occupancy tenants. At present a landlord can always take up for his own cultivation land which is held by his non-occupancy tenants: that is to say, he can eject those tenants and then take the land into his own cultivation. Therefore it is essential that provision should be made to give the landlords the land which they really do require for their own cultivation. But it is quite another matter to give them more than they require for this purpose. Now, Sir, our contention is that the provisions already in the Bill, before this amendment was made, do give the landlords all that they can reasonably ask for. There is, in the first place, clause 4(d) which we have been just discussing. Under that clause an area of nearly two million acres of *khudkasht* will become *sir* and will always be available for cultivation by the landlord. When that addition is made, the total area of *sir* will be a little short of six million acres. Most of that land is in the hands of the small proprietors for whose sake this clause is said to be necessary. There is therefore every reason to believe that as a class the small proprietors have an ample area of *sir* and *khudkasht* and their *khudkasht* of two years' standing will now become *sir*. And if they do in any case require more land subsequently for their own cultivation, it can be acquired under clause 4(e) by ten years' continuous cultivation. Every year a certain number of tenancies, statutory and occupancy, will determine, and it will then be possible for the landlord to take up land included in those tenancies and bring it under his own cultivation.

Further, there is clause 40, under which a landlord can on compensation acquire land for his own *khudkasht*. But this clause 42 goes beyond all the legitimate requirements of the small or large landlords. If this amendment becomes law, landlords will have as their *sir* land which they may not require to cultivate, which they have never cultivated and in which no statutory rights can accrue. The result, of course, will be that such land will be sub-let—and sub-let to men who will have no rights whatever. That, Sir, is opposed to the whole conception of *sir*. *Sir* has always meant the home farm of the proprietor, and the legislature has consistently tried to confine the status of *sir* to land that is actually cultivated by the proprietor. Again, this clause will work most unequally: it will benefit the harsh or the unprogressive landlord who has refused to allow any of his tenants to have occupancy rights and it will give little or nothing to the liberal landlord who has allowed occupancy rights to accrue. And, lastly, it throws open the door to exactions of all kinds. I do not say that all landlords by any means would abuse the power which this clause gives, but I do say that it will be within the power of any landlord to levy *nasrana* under the threat of

ejection. The result, in short, will be that a substantial area of land will be excluded from the protection which this Bill seeks to give.

Sir, I cannot believe that the real object of this amendment has been disclosed in the arguments which have been advanced in its support. I cannot help thinking that the real motive underlying it is not the desire to provide landlords with land for their own cultivation, because any reasonable man must see that the Bill in its other clauses makes ample provision for that, but the fear that unless the conferment of statutory rights is accompanied by a provision of this kind under which the landlords will have a certain area with which they can do as they like, then the landlords will lose or be deprived of their position and influence. I regard that apprehension as entirely groundless. I ask honourable members, who are affected by it, to consider the case of Oudh. The Oudh Rent Act has been in force for more than three and a half years. Has it had these consequences? Has it impaired the legitimate influence and rights of the landlords? There is not a shred of evidence to show that anything of the sort has happened. And if that is so, why should it be otherwise in Agra?

I speak as a friend of the landlords and not as an enemy, when I say that there can be no more profound delusion than the idea that the position of the landlords in these provinces will depend on their reserving an area to which no tenant rights can accrue. It is not by devices and expedients of this kind that the landlords will be able to maintain their traditional place, their important place, in the life of this province. Looking to the trend of events here and elsewhere, it should surely be obvious to every one that it is only by establishing good relations with their tenants that the landlords can hope to retain their position. And a provision of this kind which will deprive a large area of the protection which the Bill seeks to give, which will throw open the door to rack-renting and exactions, cannot promote good will and co-operation between the landlords and the tenants.

Pandit Nanak Chand : I support the amendment which has been so eloquently moved by the Hon'ble the Finance Member. I need not take up the time of the Council in repeating or adding to the arguments advanced by him, I understand that the landlords have in the negotiations with the Swaraj party agreed to give up this clause and I think they will, without taking too much time of the Council, accept this amendment whole-heartedly and that this amendment will be passed unanimously.

Raja Shambhu Dayal :

جناب پریسڈنٹ صاحب —

اولاً میں آپ کی مہربانی کا شکریہ ادا کرونگا — جس وقت میں یہاں آیا مجھے آج مضبوط کرسی مع ایک لیبل جس پر میرا نام لکھا ہوا ہے ملی ساتھ ہی اس کے میرے ایک دوست راجہ صاحب چوہدری دہتے ہوئے ہیں اُن کی شکایت بیجا نہیں ہے کہ اُن کے لیے خاص انتظام نہیں ہے (تہقہ) — اب میں اس ترمیم کی بابت بھی کچھ عرض کرونگا کہ جناب میمبر صاحب مال نے اُس سلیکٹ کمیٹی کی رپورٹ پر اپنی ترمیم پیش کی ہے جو سلیکٹ کمیٹی کورنمڈ کی منتخب کی ہوئی ہے — جہاں تک مجھے یاد ہے کوئی موقع کونسل کو نہیں دیا گیا کہ وہ اپنا انتخاب پیش کرے — یہ کہہ کر جانا ہے کہ

[Raja Shambhu Dayal.]

اس سے رعایا کا نقصان ہوگا اور زمینداران کی سیر زیادہ عوجائیکم۔ یہہ سمجھہ میں نہیں آتا کہ آپ ہمارا حق لیتے ہیں اور ہم کو دیتے کیا ہیں۔ کیا احسان ہمارے اُپر کرتے ہیں۔ زمینداروں کو جائیدادیں مفت نہیں مل گئیں انہوں نے روپیہ لگاکر خریدی ہیں یا اپنا خون بہاکر اراضیاں حاصل کی ہیں۔ ہمارے حقوق لیتے ہیں رعایا کو نازندگی حقوق دیتے ہیں اور اُس کا معاوضہ ہم کو کہا ملتا ہی۔ اگر ہم یہہ چاہتے ہیں کہ ہمارے ہال بچوں کی پرورش کا ذریعہ رکھا جائے تو اب کہتے ہیں کہ یہہ زمینداروں کی زیادتی ہی۔ حضور والا۔ اب تک تو یہہ مشہور تھا کہ بہمن ایسے خون غرض تھے کہ جنہوں نے دن کو چراغ جلاکر لوٹا ہی۔ حضور والا۔ گستاخی معاف وہ لوگ تو دن کو چراغ جلاکر لوٹتے تھے اور یہاں اس کونسل چیئرمین میں الیکٹرک لائٹ میں لوٹا جا رہا ہی۔ اس بابت کچھہ عرض کرنا کہ زمینداران کے کیا حقوق گورنمنٹ پر ہیں اور کیا حقوق پبلک کے اُپر ہیں اس کے بار بار اعادہ کی ضرورت نہیں ہی۔ یہہ مختلف موقعوں پر اودھ کا جب بل پیش ہوا اور اُس وقت بھی کہا جا چکا ہی جب یہہ بل کونسل میں لایا گیا تھا *

میں پنڈت نانک چند صاحب کا شکریہ ادا کرونگا کہ اس سے پہلے جو ترمیم تھی اُس میں آپ نے ہم کو سپورٹ Support کیا تھا۔ ساتھ ہی بابو سنگم لال صاحب نے ترمیم پیش کی تھی۔ خیر وہ موقع تو اس وجہ سے نکل گیا *

جو گراں بہہ گراں پسندید جنک * رون درمیاں کارواں نے گزند

(تہقہہ) لیکن میں آنپبل میمبر صاحب مال سے یہہ عرض کرونگا کہ آج ہی ہم کو یہہ سن کر خوشی ہوئی ہی کہ گزرت میں پہہ شایع ہو گیا ہی کہ آپ قائم مقام گورنر ہونگے (تہقہہ) = تہقی پر جارہ ہیں ہم لوگ یہہ دعا کرینگے کہ آپ کا ویسا زمانہ گزرنے کے بعد وہ وقت آویگا جب آپ مستقل گورنر ہو جائینگے (تہقہہ)۔ میں سوراچست میمبر صاحبان اور نیز دیگر میمبر صاحبان سے یہہ عرض کرونگا کہ اس کونسل کی زندگی میں تھوڑا وقت باقی رہ گیا ہی۔ بہتے دریا میں ہاتھ نہو لیجیئے۔ نیکی کر لیجیئے۔ احسان مند بنائیئے تاکہ آئندہ الیکشن میں پھر ہم لوگ دل کھول کر آپ کو سپورٹ Support کریں۔ ان تمام وجوہات کے ساتھ میں اس امینڈمنٹ Amendment کی مخالفت کرتا ہوں *

Pandit Govind Ballabh Pant: My views on this amendment are, I trust, well known to honourable members of this House. I have given expression to them in the minute of dissent which we had the honour to append to the report of the select committee. If they will be pleased to refer to paragraph 9 of our minute, they will see the reasons which constrained us to take the view which has just been propounded eloquently by the Hon'ble the Finance Member before this House. I am glad that it is not necessary for me to say anything in support of this proposition today, as the zamindars, belonging to a noble order as they do, have very gracefully agreed to accept the amendment which has been proposed by the Hon'ble the Finance Member and of which notice had been given by many of us.

Rai Bahadur Thakur Hanuman Singh : I had no intention to speak on the amendment which has been moved by the Hon'ble the Finance Member in spite of having a similar amendment in my name on the agenda. My honourable friend, Raja Shambhu Dayal Sahib, in delivering his speech in this Council today has expressed a grievance on behalf of the landlords saying that they had earned their zamindaris either by money or by blood, but he has forgotten to say that it was with the consent of the tenants that his ancestors and the ancestors of other landlords were allowed to possess these zamindaris. Had they revolted against the ancestors of the present zamindars, they would have been nowhere. Therefore it is but meet and proper that the landlords should be just to the tenants so that they should live and work peacefully for the advancement of the country. It is a matter of "live and let live" between the landlord and the tenants. So each should respect the rights of other.

Khan Bahadur Mr. Muhammad Ismail : I do not rise to oppose the amendment moved by the Hon'ble the Finance Member. But being one of those members of the select committee who honestly believed that a provision of this description was absolutely necessary, I think, I should be allowed to say a few words in support of it. We honestly believed that the Bill must have some provision for those zamindars who from certain circumstances over which they had no control have no land under their direct cultivation. Frequent changes in law could not be anticipated by those zamindars and they could not foresee that a tenant-at-will or a non-occupancy tenant will become a life tenant and that zamindars will lose control over such large area over which they had control under the law for the time being in force. To provide for such cases my friend the Raja Sahib of Tirwa moved this amendment which was accepted by the majority of members of the select committee. We wish to assure the Hon'ble the Finance Member that we never anticipated, and it was not our desire, that the zamindars, big or small, should use it as an engine of oppression and exact *nazrana* from the tenants. Up to the time there has been no complaint on the ground of exaction of *nazrana*, and I do not think that any large number of zamindars have benefited by exacting *nazrana* from non-occupancy tenants. The land has got a limited value ; you can exact only a few rupees from the land and it is no use expecting that hundreds and thousands of rupees can be made out of the poor tenantry by merely threatening them with ejection. However, as my friend Pandit Govind Ballabh Pant has informed you, a number of zamindars, knowing that there was strong opposition by the Government and by the swarajist members, have thought it fit to forego our right. I may also inform you that many zamindars inside this Council and outside this Council also were in favour of retention of the provision in the Bill as it is now. Still, considering that we ought not to be rapacious and also in the hope of enlisting sympathy of honourable members in other amendments that may be moved on our behalf, we have decided not to oppose the amendment of the Hon'ble the Finance Member.

Khan Bahadur Maulvi Fasih-ud-din : I thought that no speeches were needed on a matter like this and on which most of us seemed to have agreed, but now I wish to say just a few words in order to explain the position of those members of the select committee who have signed the majority report. At the time when they voted for this clause in

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before the Act of 1901 the period prescribed was twelve years. But there is no magic in the figure 12. Ten years will serve the same purpose. Ten years is the period which is laid down in the Oudh Rent Act which was passed by this very Council. I therefore see no reason for altering "10" into "12."

Rai Bahadur Thakur Hanuman Singh : I rise to say a few words to oppose the amendment which has been made by my friend Mr. Mukandi Lal. He said that this legislation has been brought before this Council with a view to improve the condition of the tenantry. Certainly it is so, but its object is not in any way to injure the condition of the landlords. When this Bill gives statutory rights in all lands not held by occupancy or other tenants who have got fixed rights to the tenants who are non-occupancy, it is then meet and proper that the Bill should make certain concessions in favour of the landlords too just as the Hon'ble the Finance Member has been pleased to state that there is no magic in the word twelve. It serves the same purpose as the word ten does. Only the landlords will acquire *sir* rights in the land two years earlier than was intended by the previous law. With these words I oppose the amendment.

Mr. Mukandi Lal : I find that the Government members find some magic in the word "ten" and so do the zamindar members. I also think that there may be some magic in it and I therefore withdraw my amendment.

Amendment by leave withdrawn.

Khan Bahadur Hafiz Hidayat Husain : I beg to move that the following words "the area of *sir* which may be acquired by a proprietor or permanent tenure-holder under clause (dd) or (e) . . . shall not exceed in the aggregate the following scale" be omitted and the following be substituted instead:—

"Provided that the area of *sir* which may be acquired by a proprietor or permanent tenure-holder under clause (e) shall not exceed the following scale:—"

Hon'ble the President : Is there any amendment to the first paragraph, before the honourable member begins his speech?

Khan Bahadur M. ulvi Fasih-ud-din : I have an amendment No. 51.

Hon'ble the President : That will come later on: Khan Bahadur Hafiz Hidayat Husain may continue.

Khan Bahadur Hafiz Hidayat Husain : In moving this amendment I am aware that if it is carried the landlords will have more *sir* land than has been contemplated by the select committee or by the framers of the original Bill. But the effect of my amendment is to allot to the zamindars definite land which they might acquire by their own individual exertions. It seems to me to be rather unfair that the zamindar, who is the natural proprietor of the land, should not be allowed, or should not be encouraged to acquire *sir* land for his own cultivation by his own individual efforts. This clause (e) refers to land which a zamindar might acquire by continuous cultivation for a certain period. If my amendment is not carried, the effect of it would be that the scale might be fulfilled by even clause (a) of section 4, and therefore the large bulk of the zamindars would

not be profited by clause (e), which provides for acquisition of *sir* rights by a continuous cultivation by the zamindar himself. When this Bill was being referred to the select committee I submitted to this House that an uninterrupted flow of land into the possession of the zamindar as his *sir* will be an incentive to him to move from the town life to the village life—there to supervise his own cultivation and live among his tenants. Thus it will directly lead to an improvement of the conditions of the tenantry if no undue restrictions are placed on the free and legitimate acquisition of land by the zamindar by his own individual exertions. Now, Sir, we find that *sir* is indispensable to the landlord, and the bulk of the zamindars live on *sir* land. In most of Bundelkhand and also in other parts of the country, I dare say, zamindars live only on *sir*, as they have no *khalsa* whatsoever. Suits under the present section 165 of Act II of 1901 clearly demonstrate this and prove that smaller landlords who number 86½ per cent, of the entire zamindar population live mostly on *sir*. The bigger zamindars have an incentive to run their own home farms on account of the high prices. If high prices continue in these provinces—and I suppose they will continue, regulated as they are by the conditions of the world market—it will stimulate the bigger zamindars to have their own farms and have as much land as they can acquire under the scale, so that they may return to village life and supervise their own cultivation. The bare fact that 2½ million acres of land have been added as *khudkasht* since 1891 goes to show that land is in great requisition by the zamindars, and they have now realized the importance of cultivation for themselves. This 2½ million acres of land has been brought as *khudkasht* since which year the *khudkasht* has not been converted into *sir*. Then I find also that in the draft Bill the restriction on the acquisition of further *sir* rights was limited only to section 4(e). Therefore my submission is that the exertions of individual landlords should not be discouraged. On the contrary, every incentive and every encouragement should be given to the landlord to revert to the home farm and bring such land as he can bring under the scale under his cultivation as his *sir*. This will lead the landlord to go back to his village and would lead to better relations between the landlord and the tenant. For if there is zamindari anywhere badly managed it is only in areas where the landlord is not in touch with his tenants. If he is in touch with them and is sympathetic, both the landlords and tenants prosper. Therefore, I hope the Council will not restrict the zamindars in their acquisition of *sir* land. The area which was already *sir* before 1902 and which may have been recorded since in later settlements should not be brought into hotch-pot, otherwise if areas under (a), (b), (c) and (d) are requisitioned in counting the scale, this clause will remain nugatory. Therefore I hope the Council will substitute the amended clause which I have put instead of the clause in the Bill.

Hon'ble the President: Will Khan Bahadur Maulvi Fasih-ud-din speak to this amendment, as his own is on similar lines?

Khan Bahadur Maulvi Fasih-ud-din: I can speak now or later.

Hon'ble the President: Will you please speak now?

Khan Bahadur Maulvi Fasih-ud-din: I give my whole-hearted support to this amendment of my honourable friend from Cawnpore. While not admitting that the Bill in question is not an unmixed blessing I do not also admit that it is an unmixed evil for the simple reason that there are some very pleasant features, some very satisfactory features, about it. For instance, one of these features is sub-clause (d) that we

[Khan Bahadur Maulvi Fasih-ud-din.]

have been discussing a short while ago in this Council. There are very many other pleasant features of the Bill which we cannot overlook. At the same time, I must confess that we must call a spade a spade, and we should not overlook the many mistakes, both consequential and verbal, that have crept in this Bill. One of these mistakes is the mistake which has just been exposed by my honourable friend Hafiz Hidayat Husain Sahib. It is, I submit, a consequential mistake. The history of the accrual of *sir* rights co-exists with the history of the accrual of occupancy rights. Act X of 1859, while conferring on the zamindars *sir* rights on account of twelve years' continuous cultivation, also conferred on the tenants occupancy rights by twelve years' continuous cultivation. These rights continued to be enjoyed both by the zamindars and the tenants up to 1901, when all of a sudden, as if by the use of a magic wand, Act II of 1901 snatched away from us the *sir* rights without giving us any compensating advantage. The Bill in question has for its scheme the conferment of life-tenancy on all the non-occupancy tenants; in other words, the Bill in question abolishes the demesne of the proprietor to the extent of the area held by non-occupancy tenants, and for that reason there was no option for the framers of the Bill but to provide some safeguards for the extension of self-cultivation by the zamindars. It was for this reason that Government put in a section saying that ten years' continuous cultivation would entitle a zamindar to acquire *sir* rights; but I am sorry to say that the Bill with so many provisos has put in so many embargos as to make this condition almost nugatory. The first embargo that this Bill lays down is that it provides for a certain scale beyond which the area of *sir* should not go. So far we could agree in the interests of the tenants; but further on, this Bill says that the area which has already been acquired under sub-clauses (a), (b), (c) and (d) as well as the area which is to be acquired under sub-clause (e) should not exceed that limit. In other words, the gift which this Bill gives us is absolutely hollow; and for this reason that the area of present *sir* is about 16 per cent. of the whole area, and the scale that has been laid down in the Bill gives the average area that one can get, which will not exceed 12 per cent. according to my calculation. In other words, in a very large number of villages theoretically we cannot gain any *sir* by ten years' continuous cultivation, but in practice we will gain it in very few villages, say, 20 per cent. In this way I think that this gift is not a real gift, and for this reason it is but right, it is but equitable, that this embargo which has been laid on the acquisition of *sir* rights should be removed. I remember a certain story which I think is appropriate in this connexion. A certain boy was amusing himself with his rod on the banks of a river on a Sunday. A certain clergyman passed that way and he said to the boy: "You are catching fish on a Sunday." The boy very angrily retorted: "Sir, I am sitting here since this morning and have not been able to catch any fish." So it has been said that this embargo prevents us from catching any fish on account of the so-called gift which is being offered to us.

I will now go into a little more detail about this so-called concession that has been given to us. We know that, according to the scheme of the Act, every tenant who has not spent a single pie for the purchase of the land, who has no interest, no stake in the land, if he wants the field and makes a furrow with the plough even for an hour,

gets the right of life-tenancy. But the zamindar who cultivates the land continuously for ten years cannot acquire *sir* rights. This is an anomaly which ought to appeal to those who are in favour of the retention of this embargo. I think that the zamindars in any case should not be treated worse than the tenants. It should not be a sin to be a zamindar and it should not be a sin to invest capital in villages. If he is a tenant for one day, he is entitled to hold the land for the whole of his life. Why should not the zamindars get at least the same rights? It is therefore but fair that the ten years' cultivation should entitle the zamindars to claim the land as *sir*. Sir, before the Act II of 1901 came into force twelve years' cultivation entitled the zamindars . . .

Hon'ble the President : May I remind the honourable member that this is not the question under discussion. We have already passed that.

Khan Bahadur Maulvi Fasih-ud-din : I am not talking of the twelve years' cultivation. I will now come to the point. Before that the rule was that twelve years' cultivation enabled a zamindar to claim the land as *sir*. No zamindar ever carried on his *sir* cultivation to such an extent as to swamp the tenant. I think, therefore, there should be no fear that if an unrestricted right was given to the zamindars to claim the land as *sir* after ten years' cultivation and serious danger will arise, especially when we are agreeing to a certain scale. I think that the request that has now been put forward on behalf of the zamindars is not likely to injure the tenants in any way, because, when the land has remained in the possession of the zamindar for ten years continuously, no member of the tenant class will ever expect to claim that land. If it is declared to be a *sir* of the zamindar there will be no grievance on the part of the tenant, because that land has been with the zamindar for the last ten years and so it does not matter to the tenant whether the land remains as *khudkash* or is declared as *sir*. The only point that can be urged is that the zamindar may be in a position to sub-let it to the tenants and in that way to rack-rent the tenant. This fear, too, I think, is misplaced. We will not at all agree to the accuracy of this allegation unless and until facts and figures are produced before us to show that the *sir* area is sub-let on a substantially large scale.

Pandit Govind Ballabh Pant : I regret very much the necessity of opposing the amendment moved by my friend Khan Bahadur Hafiz Hidayat Husain. I feel that his amendment goes against the fundamental basis of this Bill, which has been introduced with a view to protect the tenants against rack-renting and unjustifiable enhancement. The Bill does make an innovation in the agrarian policy which has been in force in these provinces for the last seventy years. We have expressed our views about its principles in detail in our minute of dissent, but it is not proper to say that while on the one hand it does in a way restrict or take away the control which the landlords at present exercise over the non-occupancy tenants, it does not, on the other hand, give them an opportunity for the expansion of the agricultural area which they may desire to bring under their own cultivation. Honourable members will be pleased to remember that the Act of 1901 altogether put an end to the growth of *sir* rights. It said that even *khudkash* of twelve years might be taken into consideration for the creation of fixed proprietary rights at the time of transfer, but it was not to acquire the status of *sir* under that Act. Under

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land which can be taken up for the landlord's own cultivation. But the conversion of land into *sir* is another matter. There ought to be a limit to the amount of land that can be so converted. The limit must of course be elastic, since the circumstances of the proprietors differ. The smaller men require proportionately more than the others. But in the case of all landlords there should be a definite limit. We shall have to consider later what that limit should be. But, whatever scale we may adopt, it is essential that that scale should apply to the acquisition of *sir* under all of these sub-clauses. If this amendment is accepted, the result will be that the amount of *sir* which may be acquired for his own cultivation under sub-clauses 4(a) to 4(e) by a landlord will be unlimited. There is no limit to the amount of land which may be declared *sir* under clauses 4(a) to 4(d). Of course, certain conditions must be fulfilled before land becomes *sir* under these sub-clauses; but, subject to those conditions being fulfilled, there is no limit to the amount of land which may be declared *sir* under them. A landlord therefore may have all the *sir* that he may require under sub-clauses (a) to (d) and yet he will, if this amendment is accepted, be allowed to go on adding to his *sir* up to a liberal scale by acquisitions under clause 4(e). The inevitable result of that will be that land will become *sir* which is not really required by the landlord for his cultivation, and will be sub-let. As I said, that is opposed to the conception of *sir* and opposed to the policy of this Bill. It is quite true that before 1901 land could become *sir* by twelve years continuous cultivation, and there was no limit to the area of *sir* which might thus be acquired. But it was found that in consequence land did become *sir* which was not required for the landlord's cultivation and which was sub-let. And it was precisely for that reason that the Act of 1901 took the step, the very drastic step, of entirely stopping any further addition to the area of *sir*. Now, we do not propose to go as far as that; we do not think it necessary to put a stop to the acquisition of *sir*. But we do think that there ought to be a definite limit, and that that limit should apply to *sir* acquired under all the sub-clauses of clause 4.

Khan Bahadur Maulvi Fasih-ud-din has said that this clause has somehow crept in. He suggested that it was inserted in the Bill by an inadvertence or carelessness or want of sufficient consideration of the relevant facts. I am rather surprised that that criticism should come from the honourable member. In the first place an analogous provision is to be found in the Oudh Rent Act; in the second place, this very provision was approved by the 1924 committee. Now, the honourable member himself was a member of that committee, and I find on looking at the report of that committee that the President, Rai Bahadur Lala Sita Ram, Khan Bahadur Maulvi Fasih-ud-din, Pandit Brijnandan Prasad Misra were in favour of this clause. That is to say, the honourable member himself was at that time in favour of this very provision. Still he now tells us it has crept in inadvertently.

I need not take up the time of the Council longer. As I said, we are anxious that the landlords should have as much *sir* as they can reasonably require for their own cultivation, and we maintain that we have made ample provision for that. We regard it as essential, however, that land should not become *sir* which is not required for cultivation, and in order to ensure that such land should not become *sir* we think it

essential that there should be a reasonable limit to the amount of land which can be converted into *sir* under any of the sub-clauses of this clause.

Khan Bahadur Maulvi Fasih-ud-din: On a point of personal explanation. I was in favour of this proviso on the ground that the acquisition of land for self-cultivation under section 40 was compulsory, and the words "after the Collector is satisfied" did not find a place there. So on that understanding I was in favour of that proviso.

The Council here adjourned for lunch.

After the recess—

Khan Bahadur Mr. Muhammad Ismail: I do not think it is necessary to multiply arguments in support of the amendment of Khan Bahadur Hafiz Hidayat Hussain. I want to mention one or two points in support of the amendment. I find, Sir, that in the Act of 1881 there was no scale laid down and there was no limitation as regards *sir*. A zamindar who had cultivated land for twelve years was entitled to the rights of a *sir*-holder whether the area was 1,000 acres or one acre, and apparently no objectionable result followed. There is another reason why I think the amendment ought to be accepted. I find absolutely no justification for placing a zamindar in a worse position than a tenant. In the present law if a tenant has cultivated land for one day he becomes a life-tenant, while a zamindar who is the owner of the land and who has paid a heavy price for it, even if he cultivates for ten years is confined to the scale laid down. My submission is that it is most unfair and unjust. There is absolutely no limitation with regard to tenants. If an occupancy tenant holding 1,000 acres has got non-occupancy lands immediately on the passing of this Act, he becomes a life-tenant. Ordinarily speaking, a zamindar ought to be in a superior position; at least we ought to place him on a par with the tenant and certainly not in an inferior position.

It has been argued that the landlords have got ample land, that is, as much land as they want, and there is no reason why they should have more. Now, with introduction of life-tenancy, it is extremely difficult to acquire land. I hope the mortality among tenants will not be so high as to leave much ground fallow and available for cultivation. So the only way of acquiring land is by way of acquisition on payment of compensation, or as the land falls vacant on the death of statutory tenants, not to make it over to another tenant. A zamindar will cultivate for ten years before he will acquire *sir* rights in that land. On the acquisition of *sir* rights nobody will be injured, there will be nobody with vested interest in it except the landlord. I do not think that a tenant has got a prospective right in that land and there is no justification to debar a zamindar from acquiring *sir* rights in it.

Again, the argument that the zamindars have got quite sufficient land is fallacious. The zamindars probably amount to 2,000,000 and in the next ten or fifteen or twenty years they may become 4,000,000. I am not sure about the figures, but I understand that this is so. Now, what provision do you make for the children of the zamindars, who will multiply in course of time? Absolutely none. Therefore I submit

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that this amendment is only fair and just. It will cause no hardship to anyone and no difficulties will arise.

Now, Sir, I may mention one more argument. You find that under the ordinary law of the land, if a stranger has been in adverse possession for twelve years he becomes a proprietor. Now, being a proprietor if he is in possession for ten years he does not become anything. After all you must base your law on ordinary common sense, justice and fair play. Because you have the power to make laws is no reason why you should go on making arbitrary laws which will not appeal to anybody. These sentiments are advanced on behalf of tenants by those persons who really are not in touch with tenants. If you go to a village and ask a villager, he will admit that the land belongs to the zamindar who has got full right to give it to anyone he pleases. The tenant merely pays two or three rupees a year, and he should not have any statutory rights. Therefore these artificial bars should be removed, and the Act should be made workable.

Mr. H. David : I am very sorry to find myself against my esteemed friends the zamindars. I suppose they have run away with the idea that they are the absolute owners of the land. I deny that fact. I say they are not the owners: the proprietor of the land is the State. I do not like to wound the feelings of my friend Khan Bahadur Maulvi Fasih-ud-din, when he claims to be a landlord and not a mere landed zamindar. I say the tenants have also a right, and a much better right, than the zamindars. Only today I found in a reply given to me that the proportion of zamindars to that of tenants is one to five, i.e., the number of tenants is five times the number of zamindars in the Agra province. And what is more, I found that the zamindars, though their number is five times less than that of the tenants, hold in cultivation one-fourth of the cultivated land in this province. This will at once show that the tenants, according to their number, hold a much smaller proportion of the cultivated land. These poor tenants must also be allowed to live. I think the idea of giving facilities to zamindars for acquiring more and more land and depriving tenants of land which is the source of their sustenance must not be supported. The idea that the village is entirely of the zamindar, that he is the sole owner of the zamindari, and that he can treat the tenants in whatever manner he likes should not be encouraged. The time has come when these poor tenants, these unprotected tenants, must also be accorded all means possible to sustain themselves. Their number is very large and the zamindars should not be allowed to take into their head that they can take away as much land as possible and cultivate *mahua* or construct poultry farms and deprive these poor tenants of their fields, the source of sustenance. I think that the zamindars have already got a sufficient quantity of land to cultivate for themselves and no addition to that land should be allowed. I therefore oppose this amendment.

Mr. Tracey Gavin Jones : I take the liberty of rising to speak on a subject of which I have very little knowledge and no experience. I do so because for this very reason and because I am not personally interested and have no political axe to grind, I am perhaps better able to distin-

guish the wood from the trees. I have heard a lot of discussion here about the rights of landlords and the grievances of tenants, but I have heard very little about the development of agriculture. I am keenly interested in the development of agriculture; I am interested in the progress of the country. The development of agriculture and the improvement of the economic position of the masses of the people is of vital importance. It is impossible to develop industry without the improvement of agriculture. The point really at issue in my opinion is as to who is the best able to improve agriculture—the landlord or the tenant. I would like the Government to make this matter quite clear. Personally I am inclined to vote for this amendment, because I believe that the landlord is better able to develop agriculture than the tenant. The Hon'ble the Finance Member who opposed this amendment said that the landlords had enough land and could get enough land under this present Act to cultivate themselves, and that if you give them an extension of *sir* land they would merely let it out to other tenants. Now, if the extension of *sir* land is going to be abused, surely the Government can find some means to prevent this. I think the landlords should be given a chance, and I would like the Government to do so. I am very sorry to say that the report of the Select Committee says very little about the development of agriculture. There is a lot in the report said by both sides about questions in which they are interested, but there is very little about the improvement of agriculture. Personally I would have liked to have seen the Director of Agriculture on the select committee. He is in the unfortunate position of being a Government servant; at the same time I am perfectly sure that he would have been allowed a free scope to give his personal opinion. I have nothing more to say except that I ask honourable members to consider the development of agriculture. For this reason I will vote for the amendment.

Pandit Nanak Chand : While I agree with the last speaker in what he had said about the development of agriculture, but there are certain limitations. My friend supposes that zamindars are very keen and have been very keen and that they have done something for the development of agriculture. So far this assumption does not hold good. If the zamindars had interested themselves in the improvement of agriculture, if they had wanted to run big farms on improved lines, there was nothing to prevent them from doing so.

Khan Bahadur Maulvi Fasih-ud-din : They will do so now. The Agriculture Commission is there.

Pandit Nanak Chand : I doubt that hypothetical assertion. Well, I maintain that the zamindars up to the present time have not shown any real desire to take to agriculture and to run farms on improved lines. If they had done so, as much land would have been in their possession as they would have desired to occupy. Now it is said that they will do so, and one of my friends has indicated that they will do so because of the appointment of the Royal Commission on Agriculture.

I maintain that the rights of the zamindars are not absolute. They are subject to necessary limitations, because the tenants, who are as much the sons of the soil as the zamindars are, are also entitled to cultivate the land which they have been cultivating for so long. Is it the intention of my friends who favour this amendment that

[Pandit Nanak Chand.]

steps should be taken to reduce a substantial number of honest, peace-loving and hard-working tenants to the position of mere labourers? The effect of the amendment will be that the protected area for the use of the tenants will be reduced, and there is no guarantee that the area which is sought to be acquired for the purpose of *sir* will be utilized for that purpose and that it will not be rack-rented and given to sub-tenants for cultivation, and, as has already been pointed out, there is no limit up to which the zamindars can acquire land for the purpose of cultivation as *khudkasht*.

Rai Sahib Chaudhri Sheoraj Singh: Is there any limit up to which tenants can acquire land?

Pandit Nanak Chand: That does not arise in the present case. The zamindars can acquire land up to any limit for the purpose of cultivation, but that cultivation will be *khudkasht*, and so long as the zamindar goes on cultivating and really requires land for cultivation, there will be nobody to disturb him in his cultivation, but it is quite a different thing to ask that this area should be designated as *sir*, in which even if it is rented out to sub-tenants for cultivation for any length of time the actual cultivation will be prevented from acquiring any stable rights as a tenant. It is for this reason that I oppose the amendment.

Babu Sita Ram: Being myself a petty zamindar, still I do not find myself in a position to support my honourable friend Hafiz Hidayat Hussain. It is true that the Legislature has got to protect the rights of the landlords, and in this Bill my humble submission is that the zamindar has been given much more than what he can legitimately aspire to. When the Oudh Rent Act was amended there was a limitation placed on the amount of *sir* land which a zamindar in Oudh could acquire, and that limitation was up to ten per cent. Here there is a sliding scale. Over and above that, all the land that is in the *khudkasht* of the zamindar will become his *sir* land. Sub-clause (e) relates only to that land which a zamindar would subsequently acquire and which he would cultivate for ten years and in which he would acquire the right of *sir*. So in the province of Agra a zamindar would be in possession of five kinds of *sir* land, *sir* lands described in clauses (a) to (d) and the *sir* land that would accrue under clause (e), and the Legislature should put a limitation upon the amount of land which would become the *sir* land of the zamindar. Now the contention of my honourable friend Hafiz Hidayat Hussain is that the lands of the description mentioned in clauses (a) to (d) should be excluded and the sliding scale should be restricted only to land that would be acquired under clause (e). Looking to the question of the development of agriculture, if zamindars had been keen on agricultural development they must have resorted to *khudkasht* and the amount of land that is shown as *khudkasht* must have been acquired by the zamindars for the development of agriculture and for no other purpose because when any man resorts to self-cultivation it certainly means that he is taking the development of agriculture as his aim and ambition. There is no other point in resorting to *khudkasht*. Therefore there is no apprehension that if *sir* land is not permitted to be acquired by the zamindar to a very large extent there would be no development of agriculture. We must take it that the zamindars must

be thinking of development of agriculture from a very long time. This idea has surely not come for the first time into their minds since the inauguration of the Agricultural Commission only, because the department of Agriculture has been in existence for a very considerable time in these provinces and the enlightened zamindars must have been referring to it and taking land for the purpose.

Therefore the point that the State has to guard against is that a very large percentage of land should not be put under the control of one class to such an extent that the other class of landless tenants may be put at a great disadvantage. If the amendment of the honourable mover is adopted, the consequence will be that a very large percentage of land which a zamindar would subsequently acquire would become of a description in which the tenants would never be able to acquire any rights and the landlord would be in a position to sub-let *sir* land of all the clauses from (a) to (d) and he could resort to rack-renting or to other abuses which the Legislature wants to prevent. He will retain land acquired under clause (e) as *khudkasht* and after the completion of ten years he will again sub-let land and then again apply for the acquisition of land under section 40, because section 40 is open to every zamindar; and when he has sub-let his land he can go to the Collector and say that "I have not got land for cultivation and I want to develop agriculture and therefore I want that such and such land should be acquired for me," and the Collector may acquire the land for him. The result will be that the land acquired under clause (e) will also become *sir* and no tenants' rights will accrue in that land. Therefore this Council should not be led away by the idea that if any limitation be put on the acquisition of land under clause (e) there would be an impediment to the development of agriculture. The honourable member who represents the Upper India Chamber of Commerce will please bear in mind clause 40 of this Bill, which says that for the development of agriculture a landlord can acquire land by making an application to the Collector. So, therefore, if there is any demand for the acquisition of land for the development of agriculture, the Legislature has provided for that. The only question now before the Council is whether any restriction on the acquisition of land under clause (e) should be placed or not, and whether, if no restriction is placed on acquisition of land under clause (e), there would be any loss to the tenantry of the country or not. My submission is that it would be a very severe loss to the tenantry of the country. Although a zamindar is the landlord of his land, but at the same time there are obligations upon the zamindars. The tenantry has also got a right. It should not be the fate of the tenantry that it should go out to foreign countries and be treated there as serfs and slaves or be treated in their own country as serfs or slaves; because when there is no land for them for cultivation they will have to go to foreign countries simply to be treated there as slaves. If there is no land in this country for their cultivation they will be mere labourers. They should also have status. There is no apprehension that the children of the zamindars will suffer, because when there would be an occasion for them to acquire land for self-cultivation the provision of law is there. The only question therefore for the consideration of this House is whether this restriction or limitation should be placed or not, and my humble submission is that it should be. I therefore oppose the amendment.

Dr. Ganesh Prasad : Although I would not disclaim the designation of a zamindar, my interest in this Agra Tenancy Bill is almost as little personal as that of Mr. Gavin Jones, and I stand here in the interest of fair play to say a few words in opposition to what fell from the lips of my friend Pandit Nanak Chand. Pandit Nanak Chand, I think, exaggerated the description that he gave of the interest that the landlords took in cultivating land. As usual I am going to hurl one or two little figures upon this House. As most of my friends know I belong to a community which is the most literate in the United Provinces—about 66 per cent. of the members of my community who are males are literate, and still it will be surprising to many of honourable friends to find that 47 per cent. of the Kayasthas are agriculturists. It would be news to many friends to know that the 47 per cent. of the Kayasthas who are so literate and who have got so many opportunities to get employment are agriculturists. Many of my own relatives are agriculturists. They are not agriculturists in the sense that they are labourers, that they receive leases from zamindars—they are petty zamindars like myself. I am one of the 86½ per cent. of the zamindars of the United Provinces, and the income I derive from land is probably 1/500 of the total income I get altogether from my various occupations. That is the reason why I said that my interest in this matter is practically as little personal as that of Mr. Jones. But in the interest of fair play I must say that my friend Pandit Nanak Chand was, as is not very infrequent with him, rather unjust. Supposing for a minute that the State gives a little more to the zamindars than is due to these zamindars. I do not think that there will be a very great deal of revolution in this land. After all, as I said on the 30th March, 1926, the zamindars play a most important part in the economy of these provinces. Supposing that we give to zamindars something out of the hands of the tenants, the tenants will also benefit. It is quite possible that there are some zamindars who oppress their tenants, but my own personal opinion, based on an experience of about 45 years, is that most of the zamindars are just towards their tenants. For these reasons, Sir, I oppose the attitude of my friend Pandit Nanak Chand.

Khan Bahadur Mr. Muhammad Ismail : moved for closure.

Hon'ble the President : There do not appear to be any other members who wish to take part in the debate. There are a few consequential amendments which the Leader of the House wishes to move. I think it would be better technically speaking if he did not move them himself.

Hon'ble Sir Sam O'Donnell : I shall get Mr. Burn to move them.

Mr. R. Burn : I rise to move amendments consequential on the omission of sub-clause (dd). The first is that in line 2 of the last paragraph on page 3 the words "(dd) or" be deleted.

Question that the words "(dd) or" stand part put and negatived.

Mr. R. Burn : I rise to move that in line 3 of the last paragraph on page 3 the words "as the case may be" be deleted.

Question that the words "as the case may be" stand part put and negatived.

Mr. R. Burn : I rise to move that in the last line of the last paragraph on page 3 and in line 1 of page 4 the words "*(dd)* and *(e)*" be *deleted*, and that the word "and" be *inserted* between the letter "*(c)*" and "*(d)*" in the last line of the last paragraph of page 3.

Question that the words "(dd)* and *(e)*" stand part put and negatived.*

*Question that the word "and" be inserted between the letters *(c)* and *(d)* put and adopted.*

Khan Bahadur Hafiz Hidayat Husain : I am not surprised at the half-hearted opposition against my amendment. I say half-hearted because I have not been able to appreciate any of the arguments that have been advanced against the amendment I have moved. The main opposition comes from the Hon'ble the Finance Member and the leader of the Swaraj party, and I hope, Sir, that in treating those objections I shall be able to show that none of them can hold water. To begin with the Finance Member. He has opposed this amendment because he thinks that the amendment is opposed to the conception of *sir*, the frame-work and the policy of the Bill. At the same time, Sir, the Finance Member admits that there is absolutely no bar to the zamindar to go on acquiring land for his cultivation as *khudkasht*. The whole point is this. If you cannot prevent a zamindar from getting land under his cultivation and studiously cultivating it for ten years, where is the policy in preventing him from getting that particular plot of land or holding, to mature from *khudkasht* into *sir*? This maturity can only come in after ten years' continuous cultivation. This period of ten years' cultivation shows that the zamindar is anxious to keep the land and is serious about it, and I ask—is it fair that you should deprive him of a particular status for that holding after the lapse of a decade? Now, Sir, my learned friend Mr. David has drawn a comparison between the rights of the actual cultivator of the soil and the zamindar, and my friend the representative from Bulandshahr has also stated that the zamindars' rights are not absolute. I admit that nobody's right is absolute. Everybody's rights are subject to the right of others. But there is no case here of competition between the landlord's and the tenant's rights. The conception of Mr. David of the right of the tenants as against the zamindars is somewhat curious; it has been always so. I recall two cases decided by him in appeal when he was officiating as Small Cause Court Judge at Cawnpore. His judgements to say the least of it were peculiar; they turned on these relations. Both of these judgements were upset by the High Court.

Hon'ble the President : The honourable member cannot be criticized in his former judicial capacity.

Khan Bahadur Hafiz Hidayat Husain : I was only saying, Sir, that we should not take Mr. David seriously when he expatiates on the relations between tenants and landlords. Now, Sir, the Hon'ble the Finance Member stated that there ought to be a definite limit to the acquisition of *sir*. I do not deny it, and I do not say that the zamindar should be allowed to add to *sir* land indefinitely. That limitation is there and the scale is there and the amendment I have put is subject to the limitation in the Bill. My friend from Bulandshahr is wrong when he says that the tenants are entitled to cultivate the land they have been cultivating at any cost. My amendment does

[Khan Bahadur Hafiz Hidayat Husain.]

not mean that the tenants may be deprived of the cultivation in their possession for no reason. But take the case of section 79 of the present Act which is now clause 99 of the draft Bill. Under section 79 of the present Act a zamindar can oust a tenant and take the land into his cultivation. The law says that if the tenant does not demur to that within six months his rights and remedies will be gone. I say that if the landholder has brought that land into his cultivation under section 79 of the present Act and cultivates that land for ten years, why should there be any bar to his rights in that land maturing into *sir* after ten years? There should be none.

Then, Sir, the further limitation to the acquisition of these *sir* rights will be the existence of the rights of occupancy, of the rights of statutory tenants if recognized in the village. The tenants are not so lax in the administration of their land that at the mere wink of the zamindar's eye they would be ready to part with the land which they and their fathers have been cultivating. I only say: do not limit the legitimate rights of the zamindar. You have got no right to do that. If a zamindar needs and is anxious to take the land, surely he has got every right to do so; let him by all means take it, if he does not encroach on the rights of the tenants, which are also not absolute at the same time.

My friend Babu Sita Ram has laid emphasis on clause 40 of the Bill. We do not know in what form that clause will be passed. Therefore it is not right to bring the contents of that clause into consideration here when we are considering an amendment which has absolutely no relation to clause 40.

Hon'ble Finance Member has said with regard to Khan Bahadur Maulvi Fasih-ud-din that he was in the committee which drafted the original Bill, its report was unanimous and no such provision is found in that Bill. But I ask him: Are the words contained in section 40, viz., "it will be in the discretion of the Collector to acquire or not to acquire land", found in that original Bill? If they are not in that Bill, by a parity of reasoning clause 40 of the draft Bill over which there has been such divergence of opinion should also not be supported.

I will now say only a few words with regard to the two points that have been urged by my friend the distinguished leader of the Swaraj party. Firstly, he says—and I quite agree with him—that there must be security to the tenant, that rack-renting and ejectments should be effectively prevented. I recognize this. But the point is this. You are trusting the zamindar on these matters as far as sub-clauses (a) to (d) of clause 4 are concerned; but you cannot trust him when it comes to sub-clause (e). That seems to me rather fallacious.

The second point urged by him is that some distinction should be drawn between *khudkash* and *sir*. I submitted in my opening speech that the bulk of petty zamindars live on *sir* only; and during the last 24 years 2½ million acres of land have been acquired particularly by petty zamindars for their own cultivation. They are anxious to keep such land. If you tell the landlord that once a *khudkash* always a *khudkash*, there will be no incentive to him for improvement. I entirely agree with my friend the representative of the Upper India Chamber of Commerce when he says that in order to give an incentive

to the zamindar for proper cultivation there should be no fetters placed in his way to acquisition of land by him as his demesne; zamindar can only improve his land if he is sure of keeping it.

These are the points which I wish to urge in reply, and I hope that honourable members will see their way to accept my amendment unanimously.

Hon'ble Sir Sam O'Donnell: I have listened to the debate carefully and, so far as I can see, no attempt has been made to answer my arguments. The plain issue before the Council is: is a landlord to be allowed to acquire *sir* in excess of what he requires for his own cultivation or is he not? That is the plain issue. There is no limit to the amount of land which he can take up for his own cultivation. There is no limit to the area of *khudkasht*. The question before us simply is whether he should be allowed to acquire more *sir* than he actually requires for his own cultivation. Now, Sir, it is undeniable that, if this amendment is carried, landlords may be and will be in a position to acquire more *sir* than they do need for their own cultivation. As I have pointed out before, a landlord may acquire under clause 4 (a) to (d) all the *sir* that he needs. There is no limit to the amount of land which may be declared to be *sir* under this clause. It may be 50, 60 or 70 per cent. of the land. And yet it is suggested that he should be still allowed to acquire land up to a liberal scale under clause 4 (e). It is inevitable that if this is permitted land will become *sir* which is not needed for cultivation. If it does become *sir*, then it is practically certain that the excess land will not be used for cultivation, but will be sub-let, and in such land the tenants will have no rights whatever. The conversion of land into *sir* which is not needed for cultivation is opposed to the policy of this Bill. I maintain that under other clauses we have made ample provision for all the needs of the landlords. Not only are we converting two million acres of *khudkasht* into *sir*, but we also propose that additional land may be acquired, subject to the scale, by continuous cultivation. We shall come later to the question of scale. I need only say that in framing the Bill we introduced a liberal scale. I shall be shortly moving an amendment to restore the scale in the original Bill. If honourable members will compare that scale with the figures showing the proportion of *sir* and *khudkasht* in the various divisions, they will see that under this scale ample provision has been made for all the needs of landlords. The figures showing the amount of land which the landlords find it desirable to cultivate themselves show conclusively that the scale that we propose will meet all their reasonable requirements.

It has been said by one honourable member that this amendment should be supported because it will favour agricultural development. My answer is that it is not needed for the purpose of agricultural development, nor will it be used for that purpose. In the first place, let us look at the clause itself. The clause says that the land must be continuously cultivated for a period of ten years. There is no question of its becoming *sir* until it has been cultivated for ten years. If a landlord wants to start a farm on modern lines, what is there to prevent him from using the land either at the end of the ten years or at the middle of the ten years for that purpose? It is not necessary that the land should be *sir* in order that a farm should be started on modern lines. Nor is

[Hon'ble Sir Sam O'Donnell.]

it necessary that the landlord should have the right of sub-letting. Once a farm is started there will be no question of sub-letting. Sub-letting would entirely defeat the whole object of agricultural development. If a landlord sub-lets the land it will not be cultivated on modern lines but on the traditional lines, and the whole object of starting a farm will be defeated.

Further, Sir, I think it is quite relevant to point out that we have made special provision in this Act for agricultural development. There is a later clause in the Bill, clause 40, which definitely lays down that a landlord can acquire land if he wishes to start a farm. I am perfectly certain that any landlord who so desires will have no difficulty in acquiring land for this purpose. It is idle to suggest that land must be converted into *sir* land in order to enable a landlord to start farming on modern lines. I am in favour of giving all reasonable facilities to landlords to promote agricultural development. But I maintain, Sir, that there is not the slightest necessity for giving the landlords facilities for converting the land into *sir* in order that they may start farms, and, as a matter of fact, that is not the use to which this amendment would be put. The land would not be turned into a model farm if it became *sir* in excess of what the landlord actually required for his own cultivation. It would simply be sub-let to the tenants, that is, to tenants who could enjoy no protection.

Khan Bahadur Hafiz Hidayat Husain inquired why, if the landlord has cultivated the land for ten years, he should be deprived of it. But, Sir, nobody is going to deprive him of the land. If he has cultivated the land for ten years, he can continue to do so for another ten years or for as long as he likes. There is no question of depriving him of possession. Moreover, the honourable member is not quite consistent. He said that there must be some limit to the acquisition of *sir* under this clause, which means that if land in excess of the scale is cultivated for ten years, the excess portion will not become *sir*. That being so, I fail to understand how, if his amendment is not passed, we are depriving the landlord of the land which he has been cultivating for ten years.

I hope I have made my point quite clear. We are as anxious as anybody that the landlord should have reasonable facilities for acquiring as *sir* the land which he needs for his own cultivation. But we are entirely opposed to his converting into *sir* land which he does not require for that purpose. It is idle to deny that that will not mean a great injury to the tenants. If land in excess of his requirements becomes the *sir* of the landlord, it is certain that it will be sub-let, and it is precisely for that reason that in the Act of 1901 the further accrual of *sir* rights was definitely barred. We do not propose to go as far as that Act, but we do think that there should be a scale prescribed, which should apply to the acquisition of *sir* under all these clauses.

Question put, that the words "the area of sir which may be acquired by a proprietor or permanent tenure-holder under clause (e) when

added to the area which is already the sir of the proprietor or permanent tenure-holder under clauses (a), (b), (c), and (d) shall not exceed in the aggregate the following scale" do stand part of the Bill.

The House divided. Ayes 46; Noes 51.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut Nawab Muhammad Ahmad
Sa'id, Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saxena.

Babu Damodar Das.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiv Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Pandit Jhanni Lal Pande.
Thakur Har Prasad Singh.
Thakur Keshava Chandra Singh Chaudhri.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anand.
Pandit Yajna Narayan Upadhyay.
Pandit Govind Ballabh Pant.
Pandit Hargovind Pant.
Mr. Mukandi Lal.
Dr. Jaikaran Nath Misra.
Babu Sita Ram.
Maulvi Zahur-ud-din.
Mr. E. M. Souter.

Noes

Raja Muhammad E'jaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Lala Kishan Lal.
Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Kharagjit Misra.
Raja Suryopal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Bavi Pratap Narayan
Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Raja Shankar Sahai.
Rai Bahadur Thakur Masah Singh.
Kunwar Krishna Pratap Singh.
Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hammed Khan.
Maulvi Shahab-ud-din.

Khan Bahadur Chaudhri Amir Husin
Khan
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman
Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Siyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din
Khan Bahadur Maulvi Muhammad Fasil-ur-
Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad
Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Mr. St. George H. S. Jackson.
Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Meh-
rotra.
Raja Shambhu Dayal.
Lieut. Raja Shaikh Imtias Rasul Khan.
Raja Jagannath Baksh Singh.
Mr. Tracey Gavin Jones.
Dr. Ganesh Prasad.

Question put, that the words "Provided that the area of sir which may be acquired by a proprietor or permanent tenure-holder under clause (e) shall not exceed the following scale:—" be there inserted.

The House divided. Ayes 51; Noes 47.

Ayes.

Raja Muhammad Ejaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Lala Kishan Lal.
Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Kharagjit Misra.
Raja Suryopal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Raja Sri Krishna Dutt Dubee.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzade Ravi Pratap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Raja Shankar Sahai.
Rai Bahadur Thakur Mashal Singh.
Kunwar Krishna Pratap Singh.
Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.

Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Saiyid Muhammad Ashiq Hussain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fasil-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Mr. St. George H. S. Jackson.
Lala Bohari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Shambhu Dayal.
Lieut. Raja Shaikh Imtiaz Rasul Khan.
Raja Jagannath Baksh Singh.
Mr. Tracey Gavin Jones.
Dr. Ganesh Prasad.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. E. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. B. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. O. Desanges.
Mr. H. David.
Babu Khem Chand.
Babu Narayan Prasad Arora.
Babu Sangam Lal.

Babu Mohan Lal Saksena.
Babu Damodar Das.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Pandit Jhanni Lal Tande.
Thakur Har Prasad Singh.
Thakur Keshava Chandra Singh Chaudhri.
Pandit Sri Krishna Dutt Palwal.
Babu Parsidh Narayan Anand.
Pandit Yajna Narayan Upadhyaya.
Pandit Govind Ballabh Pant.
Pandit Hargovind Pant.
Mr. Mukandi Lal.
Dr. Jaikaran Nath Misra.
Babu Sita Ram.
Maulvi Zahur-ud-din.
Mr. E. M. Soutar.

Dr. Shafa'at Ahmad Khan: I move that in the second column of the scale under sub-clause (e) "eighty" be substituted for "fifty." The object of this amendment is to secure protection for the small landholders. As the honourable members are aware, the Agra province is pre-eminently a province of small landholders.

Hon'ble the President: I hope the honourable member will not repeat the arguments which have already been advanced.

Dr. Shafa'at Ahmad Khan: I will not repeat the arguments. But I should like to point out that, in reply to a question which I put about

two months ago, Government gave figures showing the total number of zamindars in the Agra province as 20 lakhs. The population is about 33 millions. This means that one person out of every sixteen is a landlord in the Agra province. The zamindars have voluntarily given the statutory rights: they are willing to forego many of the advantages and privileges which they have enjoyed for a number of years. But in return all that they demand is that they should be given sufficient land to be able to maintain themselves. I do not think a long speech is required on this motion, and I commend to the acceptance of the Council.

Babu Sita Ram : I move that in the scale under sub-clause (e) "twenty-five" be substituted for "fifty." My humble submission is that now all the *sir* land that is covered by clauses (a) to (d) will be excluded, and this scale will apply only to the land which is covered by clause (e). Twenty-five per cent. of this area is not a small area. I therefore move that this amendment should be accepted.

Khan Bahadur Shaikh Masud-uz-Zaman : There is a similar motion in my name with a slight difference. With your permission I beg to support the amendment of Dr. Shafa'at Ahmad Khan on the ground that the land already given in the scale will not be sufficient for the needs of the small landlords. The present scale would neither be of any benefit to the smaller zamindars nor to the big zamindars. The big landlord will require land more or less to cultivate on modern lines. It is very difficult to define "demonstration farms run on modern lines." If the landlord is not given sufficient land to cultivate for himself, he will have an opportunity of sticking to the old principles and may or may not introduce the improvements. In many cases we notice that the modern system has failed, but in many cases it has done good for India. I think that those landholders who want to cultivate on improved lines might be allowed to keep *sir* on a larger scale. The scale prescribed in the Bill is very low, and I support the scale as amended by Dr. Shafa'at Ahmad Khan.

Lieut. Raja Durga Narayan Singh : I move that the following be substituted:

For "seventy" substitute "thirty." My object in moving this amendment is to benefit the petty zamindars. This scale of mine will benefit the petty landlords, and such zamindars are most in possession of 30 acres. One protection should be given to them, they cannot maintain themselves without it. The petty zamindars are greater in number and it is our duty to safeguard their interest. I hope the Council will accept my suggestion.

Rai Bahadur Thakur Hanuman Singh : I rise to move amendment to the amendments which have already been moved, which runs thus:—Substitute "fifty" by "thirty-five" of such area.

Hon'ble the President : I think this is an absolutely new clause and should be considered later.

Babu Nemi Saran : I beg to move that in the first paragraph of this scale the following words be substituted:—"If the total cultivated area in all the mahals of a district owned by the landlord or held by the permanent tenure-holder is not more than thirty acres." Before I go into the scale which I have proposed I may say that, as far as I can see, it appears that

[Babu Nemi Saran.]

after the passage of the amendment of Khan Bahadur Hafiz Hidayat Husain no sliding scale has any utility. We know that at present 56 per cent. is the occupancy area, 21 per cent. is the *sir* area under section 4, sub-clauses (a), (b), (c) and (d) and 23 per cent. is the non-occupancy area. And if you go to any scale which gives the power to acquire *sir* over and above the *sir* area under sub-clauses (a), (b), (c) and (d), you would find that *sir* to the extent of nearly 15 per cent. more than what they have got according to (a), (b), (c) and (d) would be acquired by the zamindars, thereby reducing the area in which statutory rights can accrue to eight per cent. only, and thus the scale would not have that utility for which it has been provided in the Bill. But anyway the scale is there, and although I would have liked to move for the deletion of the scale itself, yet I have not given any notice of that motion, so I think it better to move this scale which is to safeguard the interest of the petty zamindars, while the big zamindars would not get under it as much as they can under the present scale provided in the Bill. I think all the zamindars and all the members of the Council agree to one principle, and it is this, that the petty zamindars should get more *sir*, while the big landlords may get less or much less than the petty zamindars. If you look at the scale provided in the Bill you will find the words "the total cultivated area in a mahal." I may say that a zamindar who is a big zamindar is not a big zamindar in respect to one mahal. A zamindar who is a big zamindar is big by virtue of his holding land in many villages or in many mahals. Generally the experience of the members would be that the mahals are not more than 100 or 200 acres or at the utmost 400 acres in area. If you take mahal as a unit on which the scale is to be fixed, then the question of petty zamindars and big zamindars is not solved. A zamindar who may be quite a small zamindar, but who owns only unfortunately 200 acres in one mahal and who has got no other land in any other mahal, will be considered, according to this scale, a big zamindar, while a big zamindar who owns 20 or 40 acres in every one of his several mahals would be, according to this scale, a petty zamindar. I think if you look at this question from this point of view you would find that the very purpose for which this sliding scale was meant is defeated. In fact, you would find, if you keep in the scale a mahal as a unit, that the scale is not meant for the purpose of safeguarding the interests of petty zamindars at all, and those portions of the scale which extend to an area of more than 600 acres would be only futile. That scale would never be utilized, because generally a mahal is not more than 600 acres in area. My honourable friend Dr. Shafa'at Ahmad Khan said that he has moved his amendment for the purpose of safeguarding the petty zamindars, and others have also professed it. If they really profess such intentions and keep to them, they should take into consideration as to what is the best way to give their dues to the petty zamindars. In my amendment I want that a big or petty zamindar is not to be reckoned by what he owns in a certain mahal, but what he owns in a certain district, and I think that is a more fair way of finding out whether a zamindar is a petty one or a big one. In fact, one may say that you should go to the length of finding out how much zamindari he owns in the whole of India, but that is practically impossible. So I have tried to narrow it down to a district, and generally the zamindars own large mahals and villages in a district. Then, my amendment, as

is evident from the face of it, goes much further in providing for petty zamindar than the proposed scale in the Bill. Under it a zamindar, a petty proprietor who owns only thirty acres, must be allowed to cultivate the whole of it himself and should acquire *sir* rights in it. So my contention is that by my amendment I mean to safeguard the interests of petty zamindars which would not be safeguarded if you took the mahal as the unit for the scale, and in doing so I give a more liberal scale to a petty zamindar who owns land in only one mahal, which is generally the case with petty zamindars. Therefore, my amendment goes much more in favour of petty zamindars whose interests all members of the Council have at heart than the scale in the present Bill.

Khan Bahadur Hakim Mahbub Ali Khan :

جناب والا —

قبل اس کے کہ میں اپنی ترمیم پیش کروں میں یہ عرض کرنا چاہتا ہوں کہ میرے انگریزی نہ جاننے کی وجہ سے میری اصل ترمیم کے ترجمہ میں کچھ غلطی ہو گئی ہے لہذا مجھے معاف کیا جائے کہ میں اپنی ترمیم کو اپنے اصلی الفاظ میں پیش کروں اور میری یہ ترمیم صحیح ترمیم سمجھی جائے۔ اگر اجازت دی جائے تو میں اپنی ترمیم اصلی الفاظ میں پیش کروں۔

Ho'ble the President : • ضرور اصلی الفاظ میں فرمائیے •

Khan Bahadur Hakim Mahbub Ali Khan :

میری ترمیم یہ ہے —

- (۱) اگر مزروعہ رقبہ کسی محال میں جس کا کوئی زمیندار مالک ہے یا حقدار قبضہ مستقل پندرہ ایکڑ یا اس سے کم ہے تو کل رقبہ -
- (۲) اگر ایسا رقبہ پندرہ ایکڑ سے زیادہ ہے لیکن تیس ایکڑ سے زیادہ نہیں ہے تو پندرہ ایکڑ -
- (۳) اگر ایسا رقبہ تیس ایکڑ سے زیادہ ہے لیکن پچاس ایکڑ سے زیادہ نہیں ہے تو بشرح بالا تیس ایکڑ پر اور بقیہ پر پچاس فیصدی -
- (۴) اگر ایسا رقبہ پچاس ایکڑ سے زیادہ ہے لیکن چھ سو ایکڑ سے زیادہ نہیں ہے تو بشرح بالا پچاس ایکڑ پر اور بقیہ پر پندرہ فیصدی -
- (۵) اگر ایسا رقبہ چھ سو ایکڑ سے زیادہ ہے تو چھ سو ایکڑ پر بشرح مندرجہ بالا اور بقیہ پر دس فیصدی •

If the cultivated area in the mahal The whole.
owned by the landlord or permanent
tenure-holder is 15 acres or less.

If such area is more than 15 acres 15 acres.
but not more than 30 acres.

If each area is more than 30 acres As above on 30 acres and 50
but not more than 50 acres. per cent. on the balance.

If such area is more than 50 acres As above on 50 acres and 15
but not more than 600. per cent. on the balance.

If such area is more than 600 acres... As above on 600 acres and 10
per cent. on the balance.

[Khan Bahadur Hakim Mahbub Ali Khan.]

قبل اس کے کہ میں کچھ عرض کروں ایک دوسری بات اور عرض کرنا چاہتا ہوں - میری حالت اس کونسل میں یہ ہے کہ -

زبان یار من تہ کی د من تہ کی نمی دائم

چہ خوش بودی اگر بودی زبانش در دہان من

میں انگریزی نہیں جانتا ہوں اور یہاں پر میرے متعدد دوست ایسے ہیں جو انگریزی نہیں جانتے ہیں گاش اگر اس کو جائز رکھا جائے اور میرے آئریبل پریسیڈنٹ صاحب دوسرے میمبر صاحبان کو اجازت دیدیں اور وہ اس ترمیم کی موافقت یا مخالفت میں اُردو میں تقریر فرمائیں تو مجھے کو بڑی سہولت ہوگی

Hon'ble the President : (scale) عرض کر رہا :

ہی اس لیٹے بہت زیادہ کہنے کی ضرورت نہیں ہے *

Khan Bahadur Hakim Mahbub Ali Khan : ترمیم میری یہ ہے

گورنمنٹ کی اس پچھلی تجویز سے اس قدر موافق ہے اور اس کے سوا وہ اس قدر معتدل ہے کہ کوئی انصاف پسند جماعت یا منصف مزاج شخص جب تک کہ وہ شاہراہ انصاف سے نہ ٹل جائے اس کی مخالفت نہ کریگا - میری ترمیم کا مقصد یہ ہے کہ جو زمیندار ۱۵ ایکڑ رقبہ کا مالک ہے اس کے پاس محض اتنی زمین ہے کہ دو ہل کی کھیتی کر سکے وہ اور جو ۱۵ ایکڑ سے کم اراضی مہرورہ کا مالک ہے اس کو موقع ہونا چاہیئے کہ اپنی جملہ زمین میں سیر کا حق پیدا کر سکے اور جس کے پاس ۱۵ ایکڑ سے زیادہ مگر تیس ایکڑ سے زیادہ زمین نہیں ہے وہ ۱۵ ایکڑ زمین میں جو دو ہل کی کھیتی کے بقدر ہی حق سیر حاصل کر سکے - جبکہ ہر غیر دخیلکار کاشتکار کو یہ حق دیا جا رہا ہے کہ اگرچہ ہم نے کل ہی اس کو زمین دی تھی اگر اس کے پاس چھ ایکڑ سے کم زمین ہے تو ہم اس کو لگان سے چوگنا معاوضہ دیکر بھی زمین نہیں نکال سکیں تو کوئی وجہ نہیں ہے کہ ہمارے واسطے بھی کوئی ایسی تعداد محفوظ نہ کر دی جائے کہ اس سے اگر کم زمین کے مالک ہیں تو اپنی کل زمین کاشت کر سکیں اور سیر کا حق پیدا کرنے کے مجاز رہیں - یہ کیا انصاف ہے کہ زمیندار جو اپنی زمین کا مالک ہے اس کو تو قانون کے ذریعہ سے مجبور کیا جا رہا ہے کہ وہ ایک ایکڑ نہیں بلکہ اگر ایک بیگھ زمین کا مالک ہے تب بھی وہ صرف آدھا بیگھ زمین میں سیر کا حق پیدا کر سکیگا چونکہ موجدہ دفعہ اصول اور انصاف کے خلاف ہے اس لیٹے یہ منظور کیا جائے کہ اگر کسی زمیندار کے پاس ۱۵ ایکڑ زمین ہو تو اس کو کل زمین میں اور جو ۱۵ ایکڑ سے زیادہ لیکن ۳۰ ایکڑ یا اس سے کم رقبہ کا مالک ہے اس کو ۱۵ ایکڑ زمین میں سیر کا حق پیدا کرنے کا موقع مل جائے *

Hon'ble the President : Honourable members will find that in the very first line of the 'scale' the words "in the mahal" occur. Babu Nemi Saran has proposed that instead of having mahal as a unit we should have all the mahals of a district. This is a radical amendment and it had better be disposed of before we prescribe the scale. When this has been disposed of they shall be in a better position to prescribe

the scale. The question is whether the words "in the mahal" in clause 4(e) should be deleted and in their place the words "in all the mahals of a district" be inserted.

Hon'ble Sir Sam O'Donnell: I am opposed to this amendment. I found it difficult to follow the reasons of Mr. Nemi Saran for this amendment. I could not make out what the amendment was. Perhaps I missed something of what he said. It seems to me, however, that the natural unit is not the district but the mahal. I do not see why, if the district is to be selected as a unit, we should not select a whole division or the whole province. The second objection is that it will involve very elaborate calculations in the case of property scattered over the whole district. The third objection, and I think it is one that will appeal to the honourable mover, is that, according to this proposal, in some cases the whole village would become *sir*.

Babu Nemi Saran: I may explain what I meant to the Hon'ble the Finance Member. In fact I quite appreciate his last point and I looked to it before I sent in this amendment. But there is one thing in this amendment. The idea of having sliding scale cannot be gained by keeping mahal as a unit. If you want to have a mahal as a unit you need not have the sliding scale at all. The reasons for having the sliding scale given by honourable members over there and also by the Fremantle Committee were that they wanted that petty proprietors should get more *sir* than the big proprietors. That was the only criterion on which the sliding scale was proposed and put in this Bill. But the very object of this sliding scale is defeated by putting mahal as a unit. If you put mahal as a unit, you cannot say who is a petty proprietor or who is a big proprietor. The second objection made by the Hon'ble the Finance Member was that it would require elaborate calculations, and why should we not keep the whole province or the division as a unit? In my opening remarks I told him that I would have liked it to be the whole of India, but that was impracticable. We know that we have got one district officer and the records of the district are to be found in one place and that calculations can be made easily in regard to our district and every man can produce them in courts. If you keep the district as unit both the sides are satisfied. Zamindars who are big zamindars generally have got their zamindari in different mahals and in different tahsils, barring only those few exceptions who own land in different districts. There are hundreds of zamindars who own land in different mahals, but they have got it in the same district. My point of view is that you should give more to petty zamindars than the big zamindars. I think my amendment is just and proper, but if a better plan can be thought out, I would request the Hon'ble the Finance Member to suggest it. May I ask the Hon'ble the Finance Member how does he propose to safeguard the position of petty proprietors? We know that petty proprietors try to consolidate their holdings as far as possible in one mahal, and if they have holdings in different mahals they would always be ready to exchange their holdings in order to get more holdings in one mahal. In this way a petty proprietor who has got a larger area of land in a certain mahal will only be allowed *sir* at the lower scale, while a big proprietor who possesses say only thirty acres in every one of different mahals would be in a position to take advantage of the higher scale. I therefore think that if this anomaly can be remedied by any other amendment, in case my amendment is not suitable, it would be better.

Hon'ble Sir Sam O'Donnell : I do not think that Mr. Nemi Saran has really met my point. I maintain that the district will be an extremely difficult unit to work and that it will entail very difficult calculations. Further, the honourable member does not seem to appreciate the point that, if this amendment is carried, you may have *sir* at one end of the district, fifty miles away from the zamindari. That is not what we want. It is the first time that it has ever been suggested that any unit except the mahal should be fixed. There have been endless discussions in the 1924 committee in the select committee and so on, and nobody ever suggested taking any unit except the mahal. I hope that the Council will agree that the only proper unit is the mahal and not the district.

Question that the words "in the mahal" do stand part of the Bill put and agreed to.

Hon'ble the President : The amendments proposed are :—

Dr. Shafa'at Ahmad Khan : 80 per cent. for 50 per cent.

Babu Sita Ram : 25 per cent. for 50 per cent.

Lieut. Raja Durga Narayan Singh : 30 per cent. for 50 per cent.

I would ask the House now to concentrate their attention on the amendment of Lieut. Raja Durga Narayan Singh in which he proposes that "30 per cent." should be substituted for "50 per cent.", if the cultivated area in the mahal is not more than 70 per cent.

Dr. Shafa'at Ahmad Khan : I beg to withdraw my amendment.

The amendment by leave withdrawn.

Khan Bahadur Shaikh Masud uz-Zaman : Will the amendment of Khan Bahadur Hakim Mahbub Ali Khan be put or not? It has also not been announced what his amendment is.

Hon'ble the President : Will Khan Bahadur Mr. Muhammad Ismail explain what the amendment of Hakim Mahbub Ali Khan is?

Khan Bahadur Mr. Muhammad Ismail : The scale proposed by him, I understand, is that up to 30 acres owned by a zamindar he will be entitled to 15 acres. In any case his object is that it will be 50 per cent.

Mr. Muhammad Aslam Saifi : I rise to give my full support to the amendment that has been moved by Khan Bahadur Hakim Mahbub Ali Khan. I have worked out the scale according to the percentage given in the amendment that was to be moved by the Hon'ble the Finance Member and also the scale that has been proposed by the mover of the amendment. The difference works out at only 7 acres, but there is a vital difference between the two amendments. Up to 30 acres my friend desires that 15 acres should be given to the proprietor. If it happens that he only owns 16 acres, even then the proprietor will have 15 acres, but if he happens to possess 50 acres, then the scale of 50 per cent. would apply. Up to 600 acres the percentage is 15 and above 600 acres, whatever the quantity might be, the scale is the same as proposed by the Government. Therefore, if the two scales are compared, there will be found to be a difference of only 7 acres. I think it is more to the advantage of the small proprietor, and that is exactly I think what my honourable friend has in his mind. Therefore I wanted to make it clear to the House and I give my support to it.

Hon'ble Sir Sam O'Donnell: I venture to make a suggestion. There are so many amendments that I think there is serious danger of the Council getting confused. Would it not be better if the consideration of the scale were postponed till tomorrow? In the interval the various parties could decide as to which scale they wish to adopt. Half a dozen scales have been put forward and most of us are really in some confusion over the matter. If it is postponed till tomorrow, opinion might crystallize in the interval one way or the other and we might have one or two definite alternative proposals instead of having half a dozen of them. In the present confusion it might turn out that every one of the scales was defeated for one reason or another. If the scale be taken up tomorrow, it will simplify the decision.

Question that the consideration of the scale be postponed till tomorrow put and agreed to.

Pandit Nanak Chand: I beg to move that for the "full-stop" in line 5 substitute the following:—

"and the *sir* land given in exchange for tenants or other land shall acquire the character of the latter and shall cease to be *sir*."

The object of my amendment is to make one point clear. A tenant's land if it is acquired will according to the provisions acquire the character of *sir*; but it is not clear that the *sir* land given in exchange for that land will acquire the character of land which has been exchanged. The proviso, if it is amended, will read as follows:—

"Provided that a proprietor or permanent tenure-holder who exchanges *sir* for tenants' or other land, whether voluntary or under the order of a court, shall acquire the same right in the land which he receives as he had in the land which he gives in exchange and the *sir* land given in exchange for tenants' or other land shall acquire the character of the latter and shall cease to be *sir*."

It is to make it clear that when the land which is received by the landholders acquires the character of *sir*. The *sir* land given in exchange acquires the character of the land which has been received as *sir*.

Mr. R. Burn: I think that the object which the honourable member has in view is already secured by later clauses in the Bill. Under clause 38 if a tenant who has a right of occupancy takes land from a landlord in exchange he obtains a right of occupancy in that land. Under clause 19 if any tenant is admitted to any land in which he has not such a right he gets a statutory right. That is to say, every statutory tenant who is admitted to any other land gets exactly the same rights as he gets in the land in exchange. If he has an occupancy right or a higher right, under clause 38 he obtains that in the land. There cannot be at the same time *sir* right and occupancy right. The Council will therefore agree that no change is necessary.

Pandit Nanak Chand: In view of the explanation given I beg to withdraw my motion.

Amendment by leave withdrawn.

Babu Nemi Saran: I beg to move that after the first proviso add a second proviso as follows:—

"Provided further that land which is *sir* within the meaning of sub-clauses (d) and (e) shall cease to be *sir* if it is let out continuously for a

[Babu Nemi Saran.]

term exceeding ten years or within seven years of any portion of such land being held by a tenant.

Exception.—This proviso would not apply to the *sir* land of a landlord if he be, or in case of joint *sir* of several landlords if all of them are, of one or more of the descriptions specified in section 29, clause (6)."

As has been often repeated today while discussing the provisions regarding clause 4(d) and (e), it is admitted on all hands that *sir* rights are to be given to the landlords only for the purposes of self-cultivation and not for the purposes of marking a demesne for him which he can let whenever he likes, and in which no statutory or other rights can arise in favour of the tenant holding it. I think, Sir, while discussing section 4(e) it has been made clear by the Finance Member that the Government was opposed to the amendment of Khan Bahadur Hafiz Hidayat Husain because Government did not want to give more land to the zamindars than they really require for their own cultivation, so as to avoid the abuse of its being rack-rented and sub-let. Now when the amendment of Khan Bahadur Hafiz Hidayat Husain has been passed, the dangers of the abuses of rack-renting and sub-letting have increased a hundred times more than what they were before the amendment was passed. And my proviso says that any zamindar who continuously lets out his land which is *sir* land under clauses (d) and (e) only and not under clauses (a), (b) and (c), that is, not that *sir* land which is under the present Act as *sir* land, but which according to this new Act a zamindar would acquire as *sir* land, would be affected; my proviso only applies to that land. We know that we have given power to the landlord to acquire *sir* land, and that has been further augmented by the amendment of the Khan Bahadur, and now it is very necessary that a certain safeguard should be put on the power of the landlords regarding the newly acquired *sir* land. If this proviso is not put there, the abuses of rack-renting and sub-letting would counterbalance any benefit this Bill may provide for the tenants. In my proviso I have excluded those landlords who on account of certain disabilities shown in section 29 cannot cultivate their *sir* land. These persons are defined in that section as "A female, a minor, a lunatic, an idiot, a person incapable by reason of blindness of practising agriculture, or a person in the military service of Government otherwise than as a reservist." That is, if the landlord comes under one of these descriptions he is exempted from the operation of this proviso. I think I need not say more on the utility of this proviso, for all the members must be feeling by now that after the passage of the amendment of the Khan Bahadur which has been passed, as Mr. Gavin Jones put it, for the purposes of facilitating the development of agriculture by the zamindars who are in a better position to develop it than the tenants who are not possessed of so many resources, it is necessary that safeguards should be provided so that that amendment may only be utilized for such purposes which are in the interest of the development of agriculture. If this proviso which I have moved is not there, I may tell the honourable members of this House that they would be creating three sorts of tenants, a tenant with occupancy rights, then a statutory tenant, and then a tenant in *sir* land, and I may say that the number of tenants in *sir* land would be much more

than that of statutory tenants, and they would be cultivating a greater area of the soil than the statutory tenants, because, as I said before, under the scale at least 15 per cent. of the cultivated area can be acquired as *sir* under sub-clause (e). And taking this 15 per cent. which can be so acquired from the non-occupancy area which is now 23 per cent. only 8 per cent. of the area would remain in which statutory rights would accrue, while in those 15 per cent. which is to be *sir* land according to clause (e) you would be creating tenants in *sir* land. That is the natural effect, because a zamindar would certainly like to possess land as his *sir* when he has an unlimited right of sub-letting it without creating statutory tenancies therein and every zamindar, I can assure you, would try to have as much *sir* as he can under this Act. Therefore, Sir, I say that when you are creating a new class of tenant which is not negligible—it was negligible up to this time because the *sir* area was fixed and could not be increased and it was very small and negligible, but now we are increasing the *sir* area to an extent which would be about double the area under statutory tenants—it is very necessary that we should put a certain check on the zamindar so that he may not abuse his power in the *sir* area in which he is free to act as he likes irrespective of section 19 of this Bill. It is for these reasons that I put forward this amendment for acceptance.

Rai Bahadur Thakur Hanuman Singh : I rise to oppose the amendment which has been moved by my friend Babu Nemi Sarau. This amendment is very injurious to the interests of the landlords in the enjoyment of their *sir* rights. When a right is conferred by law on any person, he should be allowed to enjoy it to its fullest extent. We may restrict the area of *sir* land to any reasonable extent, but when once a right is created it should be left to be fully enjoyed by the person in whose favour it is created. If the amendment as it has been moved is accepted, it will give rise to a crop of litigation which will not be in the power of anyone to check or stop. This Bill aims at the checking of litigation between the landlords and tenants. I think, however, that this proposal will, instead of checking litigation, increase it. At the same time, as has been remarked already by members of this Council, the landlords have a superior right in the land to those of tenants. Therefore the landlords should be left in full enjoyment of their *sir* rights and no check should be imposed in the Bill. I know how the occupancy and ex-proprietary tenants are sub-letting their lands, not only that, but also mortgaging them, and this is going on within the knowledge of all the landlords, but on account of the fear of litigation landlords connive at it, and the rack-renting which my friend the mover wants to stop is going on everywhere and in every district. I know of cases where a tenant holding land on Rs. 4 or 5 per bigha from the landlord is sub-letting it at Rs. 30, 25 or 15 per bigha. What provision or what step does my honourable friend propose to check this sort of rack-renting? When the tenants can rack-rent their sub-tenants, there is no reason why the landlords to whom the land belongs should be prevented from enjoying a little more profit from their *sir* land than what the ordinary rent gives them. With these few words I oppose the amendment.

Pandit Nanak Chand : I rise to support the amendment which has been moved by my friend Babu Nemi Sarau. It has been pointed out that tenants sub-let their holdings and rack-rent the actual cultivator.

[Pandit Nanak Chand.]

I am as much against rack-renting by the tenants of the actual cultivators as against rack-renting by the zamindars. The only justification which has been urged repeatedly on behalf of zamindars in the case of *sir* is that the zamindars want *sir* land for their own cultivation. I recognize that the zamindars have got a right superior to that of the tenants, in respect of cultivation. If they want land for their own cultivation I maintain that they should be given the first option to take it into their own cultivation rather than to give it over to a tenant for his cultivation. If *sir* rights are meant for the cultivation of land by the zamindars, then I think there should be no difficulty in accepting this reasonable amendment. The very phraseology in which this amendment has been couched shows that my friend Mr. Nemi Saran recognizes the superior right of the zamindars as compared with that of the tenants. An occupancy tenant cannot sub-let according to the provisions incorporated in clause 29 which is to be considered for more than five years at a time. The amendment of Mr. Nemi Saran allows the zamindar to sub-let his *sir* land for a period of ten years. Then there is sub-clause (6) of clause 29 which makes certain exceptions in the case of sub-letting by a tenant on the ground of the tenant being a female, a minor, a lunatic, an idiot, a person incapable by reason of blindness.

This amendment provides that zamindars under similar conditions will be able to sub-let it without any restrictions of period to be cultivated by other persons. It has been pointed out by my friend Rai Bahadur Thakur Hanuman Singh that if this amendment is incorporated it will lead to litigation between the zamindars on one side and the tenants of *sir* land on the other side. But there is another aspect to this question, and it is this. If this provision is there, it will be a stronger incentive to a zamindar to keep the land under his own cultivation rather than sub-let it to a sub-tenant. It is for this reason also that I consider that this amendment should be accepted. I know that in this House it is impossible for any amendment to be carried unless it carries the good wishes of the zamindars with it. I appeal to my friends of the zamindar party that in the interests of their own party and the members of their own class it is necessary that they should have such a provision which will ensure that the *sir* land will be used for the purpose of cultivation by the zamindars by their own stock, by their own servants and under their own supervision. If they do not place this restriction, the result will be that the *sir* land which they have secured for their class will be utilized mainly for the purpose of sub-letting with its accompanying evil of rack-renting and getting *nazrana*. With these words I support the amendment before the House.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan: I had no intention of speaking against this amendment because I was under the impression that the honourable mover will probably not move it. But since the amendment has been moved and duly supported by my friend Pandit Nanak Chand, I think it is incumbent on me to say a few words against it. If the honourable mover had known the meaning of the word *sir* as correctly as he knows the meaning of the words "rack-renting" and "*nazrana*", he would not have moved this amendment. The word *sir*, if I am not mistaken, means the land over which the zamindar has the

fullest control. It is the zamindar's demesne. If my memory does not fail me, the distinguished leader of the Swarnj party a short time ago—I think only about an hour ago—said that *sir* land means the zamindar's demesne. Well, Sir, I do not think it is at all fair to impose any restrictions, any unjust embargo on the *sir* land. Further, if this amendment finds favour with this House we shall have two kinds of *sir*—one kind under sub-clauses (a), (b) and (c), and the other kind under (d) and (e). *Sir* under (a), (b) and (c) can be sub-let for any number of years which it would not be possible, if the amendment is carried, to sub-let the latter class (d) and (e) for more than ten years. This state of affairs will present numerous difficulties, and will cause substantial loss to landlords without benefiting the tenants in any way. Leaving this consideration aside and speaking as a practical man, I think this proviso is also unworkable. Coming to the latter portion of the proviso, I may say at once without any hesitation that it is very mischievous. It is as unjust, Sir, as it is harmful. Take for instance the case of a zamindar who possesses 100 acres of *sir* land. He cultivates himself 60 acres and sub-lets the remaining 40 within a period of seven years. The latter portion of the proviso demands that the whole of his land should become *khalsa* land. This fact either did not occur to the honourable member or he deliberately overlooked it. Whatever the case may be, I am not concerned with his motives. I gave my most serious thought to the present amendment, and I am strongly of opinion that it is both unworkable and mischievous. For these reasons I oppose the amendment.

Khan Bahadur Maulvi Fasih-ud-din: I have very often come across scenes in the law courts of various districts that when a man loses his case in the revenue courts after having gone up to the Board of Revenue, he goes to the civil court and then to the High Court, and if he loses his case there too, his legal advisers advise him to bring it in a different form. This is exactly the case here. Our friends have lost their amendments in connexion with sub-clauses (d) and (e), and now they want to deprive us of our victory by bringing in this amendment. The difference between *sir* and *khudkasht* is simply this, that while a zamindar can sub-let his *sir*, he cannot sub-let his *khudkasht*, and if we were to accept the amendment, the result would be that the victory which we have gained would be nullified. Sir, I am prepared to accept any reasonable amendment on behalf of the zamindars, but the present one is most unjust. The idea of *sir* hitherto has been that the zamindar has perfect control over it. It is his demesne as it were. It is a sphere within which he can exercise an unrestricted influence, and if we were to hedge in his absolute right in respect of *sir* with so many conditions and prevent the zamindar from sub-letting it, the result would be that we would deprive him of his *sir* rights. Besides, I cannot understand why the evils of sub-letting and rack-renting be allowed to prevail in the case of certain classes of *sir* and not in others, and further why they should be allowed to be practised even for ten years and why they should not be disallowed altogether at once. If sub-letting is an evil and if rack-renting is a necessary consequence of the former, then I think it will be fair for our friends to come forward and say that no sub-letting should be allowed either in the case of *sir* or in that of the tenants. Sir, I am really unable to follow the arguments which have been advanced by the honourable mover, and I

[Khan Bahadur Maulvi Fasih-ud-din.]

may inform him that we, the members of the zaminder party, are not going to undo what has already been done.

Hon'ble Sir Sam O'Donnell: I am unable to support this amendment. I am as much opposed as the honourable mover to the continuous sub-letting of *sir*. I have already made my position on that matter quite clear. I agree that the amendment carried as regards clause 4(e) does involve the danger of a certain amount of the *sir* land being continuously sub-let. But I do not think that that danger arises as regards *sir* under other sub-clauses, namely, (a) to (d). I do not see any reason to anticipate that there will be sub-letting of any substantial portion of that *sir*. I agree that the danger does arise on account of the amendment recently carried. But I do not think that on that ground we should adopt the present amendment, which involves a very serious departure from the whole idea of *sir*. Further, Sir, it seems to me that the amendment contains provisions which are unreasonable. It is laid down that if land is let out continuously for a term exceeding ten years or within seven years of any portion of such land being held by a tenant, then it ceases to be *sir*. It might quite well happen that a landlord might let the land for one year, then cultivate it continuously himself for six years and in the seventh year might find it necessary again to sub-let it, for some quite accidental though perfectly legitimate reason, and if he does that, then the land ceases to be *sir*. That does not seem to be reasonable. On the other hand it is quite useless merely to lay down that land should cease to be *sir* if it is let out continuously for a period exceeding ten years. All that the landlord would have to do in that case would be to let it for ten years, cultivate it for one year and then let it again for ten years. For these reasons this amendment seems to me to be unfair and unworkable, and I am unable to support it.

Babu Nemi Saran: I thought it my duty to move my amendment in order to put before the Hon'ble the Finance Member a practical way out of his difficulties in which he may be finding himself after the passage of the last amendment of Khan Bahadur Hafiz Hidayat Husain. The Hon'ble the Finance Member has very eloquently pleaded the cause against rack-renting and sub-letting in his former speech. But when I suggest to him a certain practical measure, which may lessen the chances of that abuse, to my surprise he is not prepared to accept it. I think the Hon'ble the Finance Member, if he does not agree to the amendment as far as it goes, should at least put a certain provision to check such sub-letting and rack-renting which, he said, were bound to happen if the amendment of Khan Bahadur Hafiz Hidayat Husain was passed. It is in the very nature of things that a man will take the greatest advantage of his rights. The Hon'ble the Finance Member knows what amount of litigation there has been over the acquisition of occupancy rights after continuous occupation for twelve years. The same thing will happen in this case and no amount of trouble would be too much for the zamindar to take as his demesne as much as he can under the present Bill. So far, as the reasons of the Hon'ble the Finance Member against the amendment go, they can be summed up in one sentence, namely, "I do not want a departure from the *status quo*." He does not want to depart from what was then in the Bill as presented by him in the Council. Does he not think that the amendment of Khan Bahadur Hafiz Hidayat

Husain, which was not embodied in the Bill and which has been passed in spite of his opposition, has changed the position? I think the Hon'ble the Finance Member, if he really wants to safeguard the position of *sir* tenants, should find out certain provisions by which the evils of sub-letting and rack-renting can be, if not altogether extinguished, at least diminished. The honourable member for Shahjahanpur in opposing my amendment said there will be two kinds of *sir*, and it would create certain difficulties with a *sir* in which sub-letting is allowed indefinitely, while in another sub-letting is only allowed under certain limitations. I say I would have been really too glad to apply the whole provision even to (a), (b) and (c), but as a practical man I wanted to be as reasonable as circumstances could permit. We know that the right of *sir* according to (a), (b) and (c) are the rights which the zamindars have got from before, they are based on their acquisition of that right from decades, and it would be really unfair to encroach upon these rights of the zamindars. But certainly when we are giving them a right of acquisition which they did not have as yet, then it is not unfair if we put some restrictions on that right. I can say that no reasonable doubts exist that those rights can be abused in some way or another, and that is the reason why I say that there should be two kinds of *sir*, one in which sub-letting is allowed indefinitely and the other in which it is allowed only to a limited extent.

One point made out by Rai Bahadur Thakur Hanuman Singh was that it would lead to a certain amount of litigation and the purpose for which this proviso was framed would not be achieved. I may say that, as far as the provision of sub-letting in regard to occupancy tenants and other tenants is concerned, the same thing can be said. But when we want a certain thing in a Bill we always think that it would be followed honestly, and if there can be no difficulty in regard to those sections and the procedure which restrict sub-letting by occupancy tenants and other tenants, I think there can be no difficulty in regard to this proviso which restricts sub-letting by zamindars. There was one objection which was put by one honourable member, and it was this that no reason had been assigned as to why I have put ten years or seven years, why should it not be indefinite and the sub-letting be altogether disallowed. But, Sir, in that case I may say in this Bill there are many places where figures have been put in, in the case of occupancy tenants we have put five years and two years for the purpose of sub-letting. Therefore, when we arrive at figures we arrive at them either by what we find reasonable or by what we find in previous Acts. I have given double the number of years to the zamindars, whose superior rights I do acknowledge, for fortunately or unfortunately I too belong to the category of zamindars. As far as the one other thing is concerned, it is said that if any portion of the land is let out, then *sir* rights would extinguish from the whole of the *sir* land of that landlord. The wording of my proviso is "land which is *sir* within the meaning of sub-clauses (d) and (e) shall cease to be *sir* if it is let out continuously for a term exceeding ten years or within seven years of any portion of such land being held by a tenant." That is, only that area of the *sir* land shall cease to be *sir* which is let out in contravention of this proviso and not the whole of it. If a certain landlord has got 100 acres of land and lets out 50 acres in contravention of this proviso, then only that portion which he has let out in contravention of this proviso shall cease to

[Babu Nemi Saran.]

be *sir* and the rest shall remain as *sir*. I do not understand how this proviso can be called unreasonable. If the good of the tenantry, the abuses of sub-letting and rack-renting, and the unlimited powers which the landlords have got in their *sir* rights under this Bill are before our eyes, I cannot see how anyone can say that this is unreasonable. It was only for the purpose of safeguarding the interests of *sir* tenants and for the purpose of safeguarding the interests of the landlords that I brought forward this amendment. The advantage of the landlords is that by this amendment a landlord who is going only to sub-let a *sir* throughout would be forced to use it at least once in every ten years for his own cultivation and thus he would be nearer to cultivation than rack-renting. That is my whole case, Sir, for my amendment.

Question that the amendment of Babu Nemi Saran do stand part of the clause put and negatived.

The Council was then adjourned to the following day.

APPENDIX A.

(See page 225 supra.)

Statements referred to in answer to starred question No. 47 asked by
RAO SAHIB ABDUL HAMEED KHAN on July 2, 1926.

District.	Government pleader.		Additional or Assistant Government pleader.		Subordinate Government pleader.		Total.
	Num-ber.	Community.	Num-ber.	Community.	Num-ber.	Community.	
Agra ..	1	Hindu ..	..	Hindu ..	1	Hindu ..	2
Aligarh ..	1	Do. ..	1	Do. ..	..	..	2
Allahabad ..	1	Do. ..	1	Do. ..	..	..	2
Almora ..	..	..	..	..	..	..	..
Asamgarh ..	1	Hindu ..	..	..	..	..	1
Bahraich ..	1	Muhammadian ..	..	..	..	..	1
Ballia ..	1	Hindu ..	..	..	1	Hindu ..	2
Banda ..	1	Do. ..	..	..	..	..	1
Bara Banki ..	1	Muhammadian ..	..	..	..	..	1
Bareilly ..	1	Hindu ..	..	..	..	..	1
Basti ..	1	Do. ..	..	..	2	One Hindu .. One Muham- madian.	3
Benares ..	1	Do. ..	..	..	..	..	1
Bijnor ..	1	Do. ..	..	..	2	Hindus ..	3
Budaun ..	1	Do. ..	..	..	..	..	1
Bulandshahr ..	1	Do. ..	1	Hindu ..	1	Hindu ..	3
Cawnpore ..	1	Do. ..	..	..	..	..	1
Dehra Dun ..	1	Parsi ..	..	..	..	..	1
Etah ..	1	Hindu ..	..	..	2	Hindus ..	3
Etawah ..	1	Do. ..	..	..	1	Hindu ..	2
Farrukhabad ..	1	Do. ..	1	Muhammadian ..	3	Hindus ..	5
Fatehpur ..	1	Muhammadian ..	..	..	..	..	1
Fyzabad ..	1	Do. ..	..	..	1	Hindu ..	2
Garhwal ..	..	..	..	..	..	..	..
Ghaziपुर ..	1	Hindu ..	..	..	2	Hindus ..	3
Gonda ..	1	Do. ..	..	..	1	Muhammadian ..	2
Gorakhpur ..	1	Muhammadian ..	1	Hindu ..	2	Hindus ..	4
Hamirpur ..	1	Hindu ..	..	..	..	..	1
Hardoi ..	1	Do. ..	..	..	..	..	1
Jalaun ..	..	..	..	..	..	..	..
Jaunpur ..	1	Hindu ..	..	..	..	..	1
Jhansi ..	1	Do. ..	..	..	..	..	1
Kheri ..	1	Do. ..	..	..	..	..	1
Lucknow ..	1	Do. ..	1	Hindu ..	..	..	2
Mainpuri ..	1	Do. ..	..	..	..	..	1
Meerut ..	1	Do. ..	1	Muhammadian ..	1	Hindu ..	3
Mirzapur ..	1	Do. ..	..	..	..	..	1
Moradabad ..	1	Do. ..	..	..	4	Three Hindus One Muham- madian.	5
Muttra ..	1	Do. ..	..	..	..	..	1
Muzaffarnagar ..	..	..	..	..	1	Hindu ..	1
Naini Tal ..	1	Hindu ..	..	..	..	..	1
Partabgarh ..	1	Do. ..	..	..	..	..	1
Pilibhit ..	1	Do. ..	..	..	..	..	1
Rae Bareilly ..	1	Muhammadian ..	..	..	..	..	1
Saharanpur ..	1	Hindu ..	..	..	1	Hindu ..	2
Shahjahanpur ..	1	Do. ..	..	..	..	..	1
Sitapur ..	1	Do. ..	..	..	..	..	1
Sultanpur ..	1	Do. ..	..	..	..	..	1
Unao ..	1	Do. ..	..	..	1	Hindu ..	2

District.	Government advocate.		Assistant Govern-ment advocate.		Government pleader.		Total
	Num-ber.	Community.	Num-ber.	Community.	Num-ber.	Community.	
Allahabad High Court	1	Christian	1	Muhamma-	1	Hindu ..	3

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Saturday, July 3, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 A.M., Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(103)

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hollowes.
Mr. E. E. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad E'tjas Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Mr. H. C. Desanges.
Mr. H. D. vid.
Babu Khem Chaud.
Lala Kishan Lal.
Babu Narayan Prasad Aiora.
Babu Sangam Lal.
Babu Mohan Lal Saksena.
Babu Damodar Das.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Pandit Nanak Chind.
Lala Babu Lal.
Thakur Bajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Kharagjit Misra.
Raja Suryopal Singh.
Lala Dhaken Lal.
Babu Nemi Saran.
Chaudhri Baden Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Badho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Pandit Jhanni Lal Pande.

Thakur Har Prasad Singh.
Thakur Keshava Chandra Singh Chaudhri.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhyaya.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Pandit Govind Sallabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Raja Shankar Sahai.
Dr. Jaikaran Nath Misra.
Rai Bahadur Thakur Masha Singh.
Babu Sita Ram.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Hussin.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Husain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmed Ali Khan Alvi.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Mr. St. George H. S Jackson.
Rai Bahadur Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Shambhu Dayal.
Lieut. Raja Shaikh Imtiaz Rasul Khan.
Raja Jagannath Baksh Singh.
Sir Thomas Smith.
Mr. Tracey Gavin Jones.
Dr. Ganesh Prasad,

ELECTION BY THE NON-OFFICIAL MEMBERS OF THE UNITED PROVINCES LEGISLATIVE COUNCIL OF TWO REPRESENTATIVES TO SERVE ON THE ADVISORY COMMITTEE CONSTITUTED UNDER RULE 2(1) (5) (d) OF THE RULES MADE UNDER SECTION 18 OF THE UNITED PROVINCES PRIMARY EDUCATION ACT, 1919 (VII OF 1919).

Khan Bahadur Mr. Muhammad Aslam Saifi: I beg to propose the names of Khan Bahadur Maulvi Fasih-ud-din and Rai Bahadur Thakur Mashal Singh.

Rai Bahadur Lala Mathura Prasad Mehrotra: I second it.

Hon'ble the President: As there are no other names proposed, they have been duly elected and their names will be sent to Government.

THE AGRA TENANCY BILL.

CLAUSE 4 (SCALE.)

Hon'ble the President: Now we resume the debate on the postponed sub-clause regarding the scale of *sir*. Honourable members were discussing yesterday the first class of the scale of *sir*, the chief amendment on which there seems to be a consensus of opinion is that proposed by Raja Durga Narayan Singh. I understand that this is substantially the same as the amendment proposed to be moved by the Hon'ble the Finance Member. If there is no further discussion, I will put the first class to the House. The words in the Bill are: "If the cultivated area in the mahal owned by the proprietor or held by the permanent tenure-holder is not more than seventy acres—fifty per cent of such area". To which several amendments have been proposed. I shall first put the question whether the scale as mentioned in the Bill should stand part.

Question that this scale stand part of the Bill, put and negatived.

Question that the following words be inserted there:—"If the cultivated area in the mahal owned by the proprietor or held by the permanent tenure-holder is not more than thirty acres—fifty per cent. of such area." put and agreed to.

Hon'ble the President: The other amendments in connexion with this class fall to the ground.

Hon'ble Sir Sam O'Donnell: I move that in the scale for the word "seventy" in line 5 substitute the word "thirty." That in line 6 of the scale for the word "two" be substituted the word "six". That in lines 5, 6, 7, 8 and 9 of the scale, for the words "Twenty-five to thirty-five per cent. of such area as the collector may decide" substitute the words "as above on 30 acres and fifteen per cent. on the balance." That lines 10, 11 and 12 of the scale be deleted, namely, "if such area is more than two hundred but not more than six hundred acres ten per cent. of such area."

That in lines 13 and 14 of the scale for the words "five per cent. of such area" be substituted the words "as above on six hundred acres and ten per cent on the balance"

Honourable members will have noticed that the object of these amendments is simply to restore the original scale in the Bill as drafted. They will also see if they look at the scale in the Bill as it now stands that it gives very unequal and inconsistent results. A landlord who held 200 acres could acquire *sir* up to seventy acres. A landlord who

held two hundred and one acres could only acquire *sir* up to twenty acres. A landlord who held a cultivated area of six hundred acres could acquire up to sixty acres and a landlord who hold a cultivated area of six hundred and one acres could only acquire up to thirty acres, and a man would have to have one thousand and four hundred cultivated acres before he could acquire seventy acres. I think it will be agreed that this scale gives very unequal and inconsistent results. The scale which I have proposed is consistent throughout and is certainly not less liberal than the scale in the Bill.

Lt. Raja Durga Narayan Singh : Sir, may I move my amendment ? It is No. 40.

Hon'ble the President : If you move your amendment it will be an amendment to the amendment proposed by the Hon'ble the Finance Member.

Lt. Raja Durga Narayan Singh : Yes, Sir. I move that the following scale be substituted :—

For "seventy" substitute "thirty"	Fifty per cent.
More than thirty acres but less than two hundred acres.	As above on thirty and fifteen per cent. on balance.
More than two hundred acres but less than four hundred acres.	As above on two hundred and ten per cent. on balance.
Above four hundred acres	As above on four hundred and five per cent. on balance.

Sir, my object, as I said yesterday, in moving this scale is to benefit petty proprietors. The Council is well aware that the number of petty zamindars is greater in the Agra province than in Oudh. I consider this scale to be just because by adopting it a petty zamindar who is in possession of thirty acres or less will be entitled to acquire fifty per cent. of such area, whereas you will find that I have greatly reduced the other three scales. My object in reducing them is that petty zamindars need *sir* for their own cultivation while big zamindars or big landholders will not care to acquire *sir* in each and every village owned by them, because they have got other resources to maintain themselves. I have consulted many of my friends regarding this scale and they all agree to it, because if due consideration is given to it, it will be found that petty zamindars will be benefited by it.

Hon'ble the President : The other classes of the scale proposed in the Bill as reported by the select committee are as follows :—

If such area is more than seventy but not more than two hundred acres.	Twenty-five to thirty-five per cent. of such area, as the collector may decide.
If such area is more than two hundred but not more than six hundred acres.	Ten per cent. of such area.
If such area is more than six hundred acres.	Five per cent. of such area.

Two amendments have been proposed to this scale, one by the Hon'ble the Finance Member and the other by Raja Durga Narayan Singh.

Question, that the scales as reported by the select committee do stand part of the Bill, put and negatived.

Hon'ble the President : Now there are two scales before the House, one proposed by the Hon'ble the Finance Member and the other by Raja Durga Narayan Singh.

Hon'ble Sir Sam O'Donnell : I think that the honourable member who has moved the second amendment has not realized that his scale is really less liberal than the scale that I propose. He defended his scale on the ground that it would benefit small landlords, but he will find the smaller landlords who possess up to thirty acres are in exactly the same position under my scale, and as regards landlords holding more than thirty acres, he proposes to give them less than I propose.

Hon'ble the President : The question is that for the words struck out the following be inserted, namely :—

If such area is more than thirty but not more than six hundred acres.	As above on thirty acres and fifteen per cent. on the balance.
---	--

If such area is more than six hundred acres.	As above on six hundred acres and ten per cent. on the balance.
--	---

Question that the above scale be inserted put and agreed to. The other amendment consequently fell.

Hon'ble Sir Sam O'Donnell : I have to propose an amendment, i.e. the insertion of a proviso immediately after the scale. This is not a contentious amendment. It is merely formal. I beg to move that after the scale and before the proviso the following be added :—

“ Where the proprietors of a mahal do not own specific areas in severalty, the cultivated area owned by each proprietor in the mahal shall, for the purposes of the scale, be deemed to be such portion of the total cultivated area of the mahal as is proportionate to the extent of his proprietary right in the mahal.”

This is merely to simplify calculations in the case of proprietors who do not own specific areas in severalty.

Question that the above words be inserted, put and agreed to.

Babu Sita Ram : I move that the following proviso be added after the scale :—

“ Provided that no landlord shall be entitled to acquire more than one hundred acres of land under sub-clause (e).”

Hon'ble Sir Sam O'Donnell : I submit that that is practically substituting a fresh scale. We might have an endless series of provisos entirely altering the scale that has been approved by the Council with which it is inconsistent.

Hon'ble the President : That would be an argument against the amendment proposed.

The scale will be subject to the proviso if it is carried by the House. I cannot rule it out, however.

Babu Sita Ram : As was submitted by me yesterday, this does not touch the lands that will be designated *sir* under clauses (a) to (d) of section 4. This limitation will apply only to that class of land which

will become *sir* after ten years by the continuous cultivation of a landlord. Regarding that class of *sir* my submission is that it should not exceed more than one hundred acres for each landlord. I am not, of course, making any exaggerated demand upon the landlords; the petty landlords will not at all be affected by it. It will apply to the case of big landlords only whose *sir* area under clause (e) will not assume gigantic proportions and my humble submission is that big landlords themselves do not desire it. They are very liberal; they spend a lot of their money on the welfare of the tenantry and they would not be at all keen on protecting any class of land and depriving the tenants from acquiring statutory rights in their land. As we all know, the object of declaring any class of land as *sir* is that no statutory rights or no tenant rights should grow over that land and a tenant may not subsequently. . . .

Hon'ble the President: We cannot have the same arguments over and over again. We must know that the time before us is limited. I would ask the honourable member not to repeat the same arguments over and over again.

Babu Sita Ram: This is a very innocent proviso and it should be accepted by the House.

Khan Bahadur Maulvi Fasih-ud-din: There are two points which are very vague in connexion with this motion of my honourable friend. The first point is that we do not know whether his limit of one hundred acres applies to a mahal or to a village or to the whole of the district. The second point is that we do not know whether he means that more than one hundred acres should not be acquired at one time or that that amount only should be acquired in the lifetime of a particular landlord or that the area should not be acquired even after the death of the landlord. These are the points which, I think, want to be cleared up before we can decide the matter one way or the other.

Babu Nemi Saran: I want to move an amendment to the proviso suggested by Babu Sita Ram that the words "in a district" be added after the word "land". The proviso will then read as follows:—

"Provided that no landlord shall be entitled to acquire more than one hundred acres of land in a district under sub-clause (e)."

Hon'ble the President: The honourable member wishes to propose an amendment that the words "in a district" be inserted between the words "land" and "under sub-clause (e)" in the amendment proposed by Babu Sita Ram so as to make the proviso read as follows:—

"Provided that no landlord shall be entitled to acquire more than one hundred acres of land in a district under sub-clause (e)."

Babu Nemi Saran: Without taking the time of the Council, I may say that the words "in a district" which I have added to this proviso would make the position quite clear as was demanded by my honourable friend Khan Bahadur Sahib.

Rao Sahib Abdul Hameed Khan: I rise to a point of order, Sir. Can this amendment be moved without the permission of the House?

Hon'ble the President: I have permitted it to be moved.

Babu Nemi Saran: I think, Sir, that by adding the words "in a district" we would not be making the position of the landlords in any way worse. As far as the petty landlords are concerned we have

[Babu Nemi Saran.]

provided sufficiently for them in the scale, and as far as the big landlords are concerned who under the scale can acquire more than one hundred acres in a district, they would be affected and I think the big landlords should in the interest of the peasantry, sacrifice their small interests to which they should not attach too much importance and value. It is with this object that I have moved this amendment.

Pandit Nanak Chand: I want to move an amendment to the amendment of my friend Mr. Nemi Saran. The amendment which my friend has moved stands as follows:—

“Provided that no landlord shall be entitled to acquire more than one hundred acres of land in a district under sub-clause (e).”

I would like to amend this amendment of my friend Mr. Nemi Saran as follows by substituting “three” for “one” before “hundred acres.”

Hon'ble the President: Instead of “hundred” it should be “three hundred.” It appears that we are marketing and not legislating.

Khan Bahadur Mr. Muhammad Ismail: I understand my friend wants to move an amendment to an amendment to the amendment. Is it permissible and has he got the permission of the House?

Hon'ble the President: I only said that it smacks of marketing rather than legislating in the House. But the honourable member is entitled to move it.

Pandit Nanak Chand: My friend Khan Bahadur Maulvi Fasih-ud-din said that the amendment moved by my friend Babu Sita Ram was vague and it could not be made out as to whether the amendment would apply to a mahal, to a village or the entire district. Mr. Nemi Saran wants to make this clear by his amendment by restricting this to the entire district.

Hon'ble the President: That is clear. The member had better come to the point now.

Pandit Nanak Chand: My point in moving my amendment is that one hundred acres will be too small an area for some of the big estates for the whole district. Some of those estates might like to run more than one farm; they might like to run three farms of one hundred acres each or two farms of one hundred and fifty acres each in one and the same district. My object is to enable those zamindars who want to start big farms to have enough land which they can cultivate under their own supervision and with their own stock. For this reason I have moved this amendment and I hope my zamindar friends will accept it, as I believe that there will be very few zamindars, if any, who will be able to properly manage the cultivation of a larger area in addition to *sur* land, and it will also set at rest the apprehension that zamindars owning land in more than one mahal or village will acquire unduly large areas under this clause.

Khan Bahadur Shalikh Masud-uz-Zaman: I rise to oppose all the amendments altogether. My objection to these is that, if the original amendment of Babu Sita Ram is to be accepted, it means that the real object of section 4(e) will be totally defeated. If the amendment to the amendment moved by Babu Nemi Saran is accepted it will mean that the scale which has just now been accepted will be made altogether null and void and so will be the amendment to the amendment of

Pandit Nanak Chand. For these reasons Sir, I think that the real object of all these amendments is simply to defeat the objects of the sub-clause (e) which we have passed yesterday, and it will serve no useful purpose whatsoever to keep the sub-clause at all. I therefore oppose the amendments.

Hon'ble Sir Sam O'Donnell : I adhere to the original scale. These provisos would all have the effect of limiting the amount of *sir* that might be acquired. They would impose a limit which seems to me unreasonable, and therefore I am not in favour of any of these amendments.

Question that the words "in the district" be added at the end of the amendment moved by Babu Sita Ram, put and negatived.

Question, that the words "three hundred" be substituted for "one hundred", put and negatived.

Question, that the words "Provided that no landlord shall be entitled to acquire more than one hundred acres of land under sub-clause (e)" be inserted, put and negatived.

Khan Bahadur Hafiz Hidayat Hussain : I beg to move that the following be added as the last proviso "Provided that land which was recorded as *sir* at the last settlement prior to the passing of this Act—and has been continuously so recorded since, shall be presumed to be land of the class mentioned in sub-clause (a) till the contrary is proved."

This proviso found a place in the Bill but was omitted in select committee in view of the provisions of section 57 of the Land Revenue Act. I find some legal difficulty in omitting this clause and if this legal difficulty can be overcome by any explanation, I shall withdraw my amendment. My difficulty is this, that under section 57 of the Land Revenue Act entries made in accordance with the provisions of chapter IV of the Land Revenue Act, shall be presumed to be true till the contrary is proved. In the Tenancy Act of 1901 *sir* is defined in section 4(13) and under this section *sir* was to have the same meaning as in the Land Revenue Act. In the Land Revenue Act of 1901 *sir* is defined in section 4(12), and all those three clauses which are contained in the Land Revenue Act of 1901 have been embodied in the present clause 4. This clause, however, does not say in what category of definition all that land which has been recorded as *sir* since 1902 will come in. This section 57 is a general section and refers to presumptions with regard to entries made in the record-of-rights prepared under section 32 of the Land Revenue Act. According to the rules of interpretation of legal phraseology whenever you employ the word "means" it means that the definition is comprehensive and self contained, that is you cannot import into that definition any other words that are not already there. This present definition means that land which is recorded as *sir* up to the passing of Act II of 1901 shall alone continue to be *sir*. This is the import of the word "means" included in the present definition and therefore *sir* recorded in settlements since the passing of Act II of 1901 will be automatically excluded because it does not come in under clause (a), it does not come in under clause (b), it does not come in under clause (c), does not come in under clause (d) and may not come in under clause (e). Therefore my difficulty is that until you include this proviso, *sir* recorded since 1902 will be automatically excluded. I think, therefore, it is necessary to have this proviso here.

Mr. R. Burn : I have to explain in the first place to the Council that the words which the honourable mover wishes to restore were placed in the Bill by misconception. They were copied from the section which dealt with the new classification of *sir* in the Oudh Rent Act. In Oudh they were necessary for quite different reasons. The old definition of *sir* in Oudh was land which had been recorded as cultivated by the proprietor for seven years before the passing of the Rent Act of 1886. The clause will be found in section 3(17) of the Oudh Rent Act as amended. The old definition was simply land which for seven years immediately preceding the passing of the Act of 1886 had been continuously dealt with as *sir* in the distribution of proprietary and under-proprietary profits and charges. The Revenue Act of 1901 dealt with *sir* in Agra and had a provision that land recorded as *sir* in the last record-of-rights framed before the commencement of the Act and continuously so recorded, was *sir*. There was no such provision in the old Land Revenue Act regarding *sir* in Oudh, and a provision was therefore made when the Oudh Rent Act was amended. But to place this clause in our present Bill would be a redundancy and practically meaningless. So far as presumption goes we have the provision in section 57 of the Land Revenue Act which provides that entries made in the record-of-rights shall be presumed to be true until the contrary is proved. The provision would thus alter the law in a matter which, I think, the honourable mover does not propose in one respect and otherwise it is entirely redundant.

Khan Bahadur Hafiz Hidayat Husain : My difficulty has not been solved yet. I only want to find out if any *sir* has been recorded since January 1902 under any of the clauses mentioned in section 4?

Mr. R. Burn : In the Land Revenue Act, 1901, there is no provision for recording land freshly as *sir* in revising the record-of-rights since the Act of 1901 was passed.

Amendment by leave withdrawn.

Question, that clause 4, as amended stand part of the Bill, put and agreed to.

CLAUSE 5.

5. On the death of a *sir*-holder his *sir* right shall devolve on the person who succeeds to his proprietary interest in the *sir*.
Succession to sir right.

Explanation.—For the purposes of this section the words “proprietary interest” shall be deemed to include the interest of a permanent tenure-holder.

Babu Nemi Saran : I beg to move that in line 1 after “*sir*-holder” add “or on his gift of his proprietary right in the *sir* land” and at the end of the clause omit full-stop and insert comma and add “or in whose favour the gift is made.”

If you turn to clause 6 of this Bill you will find that under that the *sir* right is not transferable except by gift. So far as this gift of *sir* is concerned it seems to me to be very ambiguous. The ambiguity lies this way. It is possible to give away *sir* in gift without giving away the proprietary right in *sir* land to the man to whom the *sir* is given. Is it possible to give away the rights of *sir* in a land before the *sir*-holder transfers his proprietary right in that *sir* land? It may arise like this. Suppose a man wants to sell his land, and

taking into account the provisions of section 6, before first transferring the proprietary right, he by way of gift gives away the right of *sir* in the *sir* land which he wants to transfer, and he collusively takes some money from that man and two or three days afterwards he executes a sale deed in respect of his proprietary right in that *sir* land. As we know, there is a provision in this Bill which does not allow any *sir*-holder to transfer his right of *sir* so as to give away his ex-proprietary right which might have accrued to him when he would have sold it. I think this provision can be misused by those persons who want to evade that provision to which I have just referred and thus take money in this circuitous way by extinguishing their ex-proprietary right by giving away their *sir* land in gift. I could appreciate if there should be a provision in this Bill by which a *sir*-holder should be allowed to give away his *sir*-land in gift to the person to whom his proprietary right is gifted away. Clause 5 says "on the death of a *sir*-holder his *sir* right shall devolve on the person who succeeds to his proprietary interest in the *sir*." The question may be put that if a *sir*-holder transfers or gifts away his proprietary right in a *sir* land by way of gift would the rights of *sir* be transferred or inherited by the person to whom that gift is made of the proprietary rights. Section 5 does not make it clear. In order to make this clear it is necessary that we should add after the words "on the death of a *sir*-holder" the words "or on his gift of his proprietary right in the *sir*-land" his *sir* right shall devolve on the person who succeeds to his proprietary interest in the *sir* or in whose favour the gift is made. It is only to make the position clear that I want this amendment to be made.

Mr. R. Burn: The honourable mover has explained that what he really wishes to be made clear is the question whether *sir* rights may be transferred by way of gift. The old Act implied this in dealing with the case of ex-proprietary tenants when it said that ex-proprietary rights arise in certain circumstances including voluntary alienation or other than by gift. The draft in the Bill is intended to make that clear in clause 6 (a). But, as the honourable member has pointed out, the question was not perfectly clear. It has been considered again, and with your permission, Sir, I should like to move an amendment in clause 6 (a) by adding the words "to the person to whom the proprietary interest in the land is gifted." Clause 6 (a) would then read as follows:—"Sir right is not transferable except (a) by gift of the *sir* to the person to whom the proprietary interest in the land is gifted."

Hon'ble the President: What is the amendment?

Mr. R. Burn: The amendment is that after the word "*sir*" in clause 6 (a) the words . . .

Hon'ble the President: We are not now dealing with clause 6. We are dealing with clause 5.

Mr. R. Burn: I understand the honourable member proposes to cut out 6 (a).

Hon'ble the President: He has not yet moved

Mr. R. Burn : I may say that when clause 6 (a) is taken I propose this amendment. I think this will meet with the intention of the honourable mover.

My objection to the honourable mover's amendment is that it complicates the language of clause 5, which deals only with succession, and that it would come more appropriately by amending clause 6 (a), which deals with the transfer.

Babu Nemi Saran : Out of the two difficulties mentioned by me one has been solved by the honourable member of the Board of Revenue, but the other still remains. The position is this. Suppose a gift of the proprietary rights in *sir* land is made by the landlord, then in that case, as pointed out by Mr. Burn, no exproprietary rights would accrue in favour of the person who has made the gift. But my object in moving the amendment was to make it possible for the landlord to gift away his right in *sir* land at the same time as he made the gift of his proprietary rights. At present in the Bill there is no provision to secure that end, and this emphasizes the need of my amendment.

Mr. R. Burn : I think clause 6 (a) distinctly provides that *sir* right is transferable by gift of the *sir*.

Hon'ble the President : The honourable mover's point is that the land so transferred should retain the character of *sir*.

Mr. R. Burn : That is certainly the intention of clause 6 (a). *Sir* right is not transferable except by gift of the *sir*.

Amendment, by leave, withdrawn.

Question that clause 5 stand part of the Bill, put and agreed to.

CLAUSE 6.

6. *Sir* right is not transferable except —

Transfer of sir right.

(a) by gift of the *sir*, or

(b) by exchange of *sir* between co-sharers in the mahal.

Mr. R. Burn : I rise to move that in clause 6 (a) after the word "*sir*" the following words be inserted, namely:—"to a person to whom the proprietary interest in the *sir* is gifted."

From the clause as it stands in the Bill it might appear that *sir* right could be given without giving the proprietary interest. Such a thing is impossible, but there is a danger of the courts speculating on the meaning of clause 6 (a) as it stands, and it seems advisable to make it clear that when a right of *sir* is gifted in certain land, the proprietary right in it must also be gifted.

Question that the words "to a person to whom the proprietary interest in the sir is gifted" be inserted, put and agreed to.

Rai Bahadur Thakur Hanuman Singh : I beg to move that in line 2 of sub-clause (b) of clause 6 the word "*mahal*" be substituted by the following words:—"same or different mahals; provided in the latter case the exchanging co-sharers have shares in the mahals." My intention in moving this amendment is that co-sharers having *sir* land in different mahals may be permitted to exchange their *sir* land, so that the exchanging parties may have a more compact area for their cultivation

than they have before the exchange. It may be said, Sir, that until there is an exchange of proprietary rights also there cannot be any exchange between the proprietors of *sir* lands in different mahals. But I would say that after the exchange their right in the land exchanged would devolve upon the proprietor in whose favour the exchange will be made.

Hon'ble Sir Sam O'Donnell: When I saw the honourable member's amendment I wondered what it meant. I consulted several other official members and they also were in doubt as to what it meant. For example, take the expression "provided in the latter case the exchanging co-sharers have shares in the mahals." What mahals? The amendment refers to a number of mahals. In any case it seems to me that the amendment, whatever it means, is an unnecessary complication. We provide in the Bill that *sir* right shall not be transforable except by exchange of *sir* between co-sharers in the mahal. That provides for the ordinary case and it seems to me to meet all the practical requirements.

Rai Bahadur Thakur Hanuman Singh: I have not been able to realize the difficulty which the Hon'ble the Finance Member feels, because if one proprietor has *sir* lands in two mahals and another proprietor has also *sir* land in the same mahals and if they want to exchange their *sir* lands between themselves in these mahals, there ought to be no difficulty if they agree to that exchange. Each co-sharer in one mahal will get a much more compact area for his cultivation than before the exchange.

Hon'ble Sir Sam O'Donnell: I remain unconvinced of the honourable member's arguments. As I said before, his amendment seems to produce an unnecessary complication.

Amendment, by leave, withdrawn.

Pandit Nanak Chand: I move that the following proviso be added:—

"Provided that *sir* land transferred by gift under sub-clause (a) shall be included as *sir* in subsequent calculations of the scale of *sir* laid down in clause 4." Sub-clause (a) provides that a proprietor may transfer *sir* land with the right of *sir* and the proprietary right in that *sir* land. The amendment that I have moved to be incorporated seeks to provide a safeguard for cases where a zamindar transfers his entire *sir* land or a major portion of the same to some one of his relations and subsequently wants to acquire more *sir* under the provisions of this Bill according to the scale on the basis of the extent of his proprietary interest then the *sir* which he has gifted to any one of his relations or friends may be calculated for purposes of future acquisition of *sir*, so that it may not be possible for a zamindar to gift away his *sir* which he is entitled to acquire under the scale to some one of his relations or friends and then again to acquire additional *sir* under the scale and thus defeat the object of the restrictions imposed by the provisions of this Bill.

Maulvi Abdul Hakim: I think that the difficulty which has been pointed out by my friend Pandit Nanak Chand does not arise. It would have arisen if sub-clause (a) had remained as in the Bill. But since that sub-clause, as amended, has been passed, the difficulty does not arise at all.

Babu Nemi Saran : I support the amendment of my friend Pandit Nanak Chand. I think the amendment is quite reasonable and very necessary after the scale and the other amendments giving an extension to *sir* have been passed. The explanation which has just been offered by Maulvi Abdul Hakim Sahib does not, I think, satisfy the arguments of Pandit Nanak Chand in favour of this amendment. Suppose, I have got 1,000 acres of land and according to the scale I am entitled to 100 acres of *sir* in it. I gift away these 100 acres of *sir* land to one of my relatives or friends and with it I also gift away my *sir* rights in those 100 acres of land ; my 900 acres of land remain with me intact and only one hundred acres of land are gifted away and the *sir* right therein is also gifted away. Now after gifting away 100 acres of land with its *sir* rights, I am entitled to acquire new *sir* rights according to the scale which I may be allowed for my 900 acres ; for after gifting away the *sir* rights I do not possess a single acre of *sir* with me. While the man to whom the gift has been made would have *sir* according to his own share of land which he holds as a landlord plus the *sir* which he gets by that gift and in that way the area of *sir* can be extended to any amount and to any number of acres. That is the difficulty which has not been solved and therefore I support the amendment.

Hon'ble Sir Sam O'Donnell : It is true that there is a slight lacuna in the Bill as at present drafted. In the Bill the *sir* which can be acquired under clause 4 must not exceed a certain area. That at least was the original proposal. The clause has now been altered, but at any rate, in clause 4, there is no reference to *sir* which has been acquired by gift. Therefore, the amendment, I think, is a logical amendment. At the same time the gift of *sir* under clause 6 (a) is so rare that it was not considered worth while burdening the Bill with this addition. Otherwise, I am really quite indifferent as regards this particular amendment.

Pandit Nanak Chand : The Hon'ble Finance Member has admitted that this amendment is a logical one and my friend Mr. Nemi Saran has given an illustration which shows as to how it is possible for a proprietor to divest himself of all *sir* area to some one of his relations or friends. The Hon'ble Finance Member has stated that such instances will be rare, but even such instances which may take place ought to be provided for and if this proviso is not added, I feel inclined to think that such instances will not be rare, but will become fairly numerous. All sorts of devices will be used by some of the zamindars to defeat the provisions of the Bill which in any way restrict their freedom. They might gift off their *sir* in the name of their wives, nephews or other safe relatives. My friend Khan Bahadur Mr. Aslam Saif asks me as to why they should do it. The plain reply is that they will do it with a view for all practical purposes to retain that *sir* in their own possession, because the *sir* will be transferred to safe persons, and to acquire more lands for *sir* to which they would not be otherwise entitled. Each such zamindar will be able in actual practice to retain the possession of *sir* nominally gifted off to his relations and to acquire more *sir* on the basis of the area that will be left after the exclusion of the gifted area. I, therefore, think that it is nothing but fair and equitable to accept this proviso in the interest of preventing the evasion of the scale that has been provided in clause 4.

Hon'ble Sir Sam O'Donnell : I am afraid all of us, including myself, have been discussing this proposal under a complete misapprehension. For the moment we all assumed that clause 4 has still the form in which it was when the Bill was drafted. The Council will remember that the scale now only applies to *sir* acquired under clause 4 (c). It does not apply at all to *sir* acquired under clauses 4 (a), (b), (c) and (d). It only applies to land which becomes *sir* after continuous cultivation for ten years. Therefore the contingency that the honourable member has in view would never arise.

Question, that the above proviso be inserted, put and negatived.

Question, that clause 6, as amended, stand part of the Bill, put and agreed to.

CLAUSE 7.

Extinction of *sir* 7. *Sir* shall cease to be *sir*—
right,

(a) when it becomes the subject of an ex-proprietary tenancy,

(b) *when a right of occupancy is conferred therein under section 17 :*

Provided, *first*, that if an ex-proprietary tenant regains his proprietary right in the land held by him as ex-proprietary tenant, such land shall again become his *sir*.

Provided, secondly, that if the right of occupancy conferred in sir under section 17 is extinguished, such land shall again become the sir of the proprietor.

Hon'ble Sir Sam O'Donnell : I beg to move that in the second proviso, line 2, after the word "extinguished" be added the words "and the proprietor or permanent tenure-holder has not in the meantime transferred his right in the land." also in line 3 of the second proviso for the words "the *sir* of the proprietor" substitute the words "his *sir* or the *sir* of his heir, as the case may be."

Clause 7 as it emerged from the Select Committee made no provision for the case of a proprietor who in the interval between the conferment of occupancy rights and the extinction of such rights transfers his proprietary rights in the land. The section obviously contemplates that on the extinction of occupancy rights the land shall again become the *sir* of the original proprietor and not of the subsequent proprietor having obtained the property by transfer or otherwise in the meantime. My amendment to add the words "and the proprietor or permanent tenure-holder has not in the meantime transferred his right in the land" after the word "extinguished" in line 2 of the second proviso and the substitution of the words "his *sir* or the *sir* of his heir, as the case may be," in line 3 of the proviso will make this clear.

Question, that the above words be inserted in the second proviso to clause 7, put and agreed to.

Rai Bahadur Thakur Hanuman Singh : I rise to move that the second proviso to this clause as amended be omitted.

My reason for moving this amendment is that when once a right is extinguished it cannot be regained unless that right is again acquired under the law. If the right of occupancy is conferred on a tenant in respect of *sir* land, the proprietor conferring such right on

[Rai Bahadur Thakur Hanuman Singh.]

the tenant will be entitled to acquire more *sir* rights in the remaining land which he possesses, and if he acquires that right during the incumbency of the occupancy tenant because the *sir* right in the land in which he confers occupancy right is extinguished, the proprietor will be able to acquire more *sir* in the mahal than is provided by section 4 (e). I would, therefore, request the House to accept the amendment which I have moved.

Maulvi Abdul Hakim : I oppose this amendment. I think that the clause as it stands at present is in the interest of both the landlords and the tenants. It is in the interest of the landlords because they know that if they confer occupancy right on a tenant in their *sir* land, then after the extinction of that right they will re-acquire their *sir* right. It is in the interest of the tenant because this provision will induce landlords to confer occupancy rights more and more on tenants in *sir* land. I think that on this ground the amendment should be disallowed.

Hon'ble Sir Sam O'Donnell : I am opposed to this amendment because it seems to me that the effect of it would be that landlords would be less willing to confer occupancy rights in *sir*. I do not want to discourage them from conferring occupancy rights. On the contrary, we should all be glad if they do confer such rights, and the effect of this amendment would, I think, be to make a landlord more chary of conferring the right of occupancy. For that reason I am opposed to it.

Rai Bahadur Thakur Hanuman Singh : A few minutes before it was admitted by the Government that the resolution of Pandit Nanak Chand was logical, because it would give the landlords right to acquire more *sir* land in his mahal than is allowed in the scale laid down in clause 4 (e). My amendment is also based on the same ground.

Hon'ble the President : But that amendment was lost.

Rai Bahadur Thakur Hanuman Singh : I think that the landlords should not be allowed to acquire more *sir* than what is provided in this scale. I admit that the reason put forward by the Hon'ble Finance Member that the landlords should be encouraged to confer occupancy rights in their *sir* lands has force and on account of the reasonableness of his argument I withdraw my amendment.

Amendment, by leave, withdrawn.

Pandit Nanak Chand : In view of the amendment of the Hon'ble the Finance Member this amendment will have to be slightly changed. For the words after "become" the following be substituted :—

"Land of the co-parcenary body of co-sharers or the landlord, as the case may be."

Hon'ble the President : The honourable member should have moved an amendment to the Hon'ble the Finance Member's amendment. The House has already decided that the words proposed by the Finance Member stand part and I do not think the amendment can be moved now.

Question, that clause 7, as amended stand part of the Bill, put and agreed to.

CLAUSE 8.

8. (1) Every agreement which purports, or would operate, to restrict a tenant from enforcing or exercising any right conferred on or secured to him by this Act is void to that extent.

Restrictions on leases and agreements relating to tenancies.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), an agreement between a landholder and a tenant is void if and in so far as it purports—

- (a) to prevent the tenant from acquiring a right of occupancy in land in accordance with the provisions of this Act;
- (b) to take away or limit the right of the tenant to make improvements and to claim compensation for the same in accordance with the provisions of this Act;
- (c) to entitle the landholder to eject the tenant or enhance his rent otherwise than in accordance with the provisions of this Act;
- (d) to take away the right of the tenant to sub-let in accordance with the provisions of this Act;
- (e) to empower the landholder to distrain otherwise than in accordance with the provisions of this Act.

Khan Bahadur Maulvi Fasih-ud-din : I beg to move that the following words be added between the words "every agreement" and "which purports" :—"made after the passing of this Act."

I look upon this amendment as a mere consequential amendment. The clause in question as it stands, to say the least of it, constitutes a bad precedent, a dangerous innovation and, if I be excused, a very reactionary measure. We all know that a large number of Acts contain saving clauses but this clause means that only the agreements which are made after the passing of the Act, but also the agreements which have been made previous to the passing of the Act whether they have been made under the existing Act (Act II of 1901) or whether they have been made even under the previous Act (Act XII of 1881) should be considered null and void if they are against any of the provisions of this Act. Such a provision is not to be found in any Acts of India. It is not to be found even in the Code of Civil Procedure or in the Specific Relief Act or in the Transfer of Property Act or even in the existing Act (Act II of 1901). I cannot understand the rationale of this clause and I think that in respect of all the agreements which have been made previous to the passing of the Act the clause cannot be styled as a saving clause. It is to be styled as a destructive clause, and destructive with a vengeance. I am afraid that if we were to accept this clause as it stands it will shake the confidence of the public in our laws, and I cannot understand the motive with which this clause has been put in unless it be for the purpose of killing the institution of landlordism by a slow administration of and by introducing finally the ryotwari system in this province. I have said over and over again that if that is the object of this law or of any other measure which may be adopted in future, then it will be better for those who are in favour of such measures to buy up all our property and introduce the ryotwari system once for all instead of making such laws. But I have also said that such a step

[Khan Bahadur Maulvi Fasih-ud-din.]

would involve millions and millions of money; and where is the money to be available from? Sir, I knew that this 20th century was the century of progress, a century of good law, but a section like this, I think, disgraces any Act that has to be passed or may be passed in the future. I submit, Sir, that I ask, I request, I implore the luminary of the Government benches I mean the Legal Remembrancer not to defend the principle that underlies this indefensible section. We are the members of a law-making assembly, and I am afraid that a provision of this kind will not entitle us to the name that we possess. I believe that it is but just, fair and equitable that all the covenants, all the agreements which have been made under the living provision of a living law should be respected and their sanctity should be preserved. I think the position which I and many of my colleagues in the Council have taken is but fair and I hope that the House will see its way not to oppose this most just and fair amendment of mine but to accept it.

Khan Bahadur Hafiz Hidayat Husain: I tabled a similar amendment. I will not, however, move it, but will confine myself to supporting my friend Khan Bahadur Maulvi Fasih-ud-din's amendment. No Tenancy Act can claim to be exhaustive as to terms and conditions on which a contract of tenancy can be made and therefore no contract entered into between the landlord and the tenant which does not go against the policy of the common law contained in section 25 of the Indian Contract Act can be vitiated. This clause is based on a wrong principle. It sets at naught all the contracts that may have been legally arrived at between the tenant and the landlord. Now, Sir, is it right for the legislature to set at naught any contract that may not be against the principles of the common law, and which the tenant may have entered into with his landlord with his eyes open, without duress, without any undue pressure or influence? All our judges are jealous in respecting the sanctity of mutual contracts. This is the practice of judges of the district courts up to their Lordships of the Privy Council.

I have known cases in which interest at 200 per cent. has been decreed. Why? Because the judges are first bound to respect all contracts unless shown to be against public policy. This clause goes very much further than any enactment hitherto passed. I might refer you to section 3 of Act II of 1901. Under that section—it was a special section—all contracts entered into after the first day of April, 1900, were vitiated. The reason was simple. It was that because the landlords on account of the prospect of Act II of 1901 being passed, and feeling it to be a drastic measure were anxious to enter into agreements with their tenants so as to defeat the provisions of law. Such agreements made to defeat law were held null and void. Now take the Oudh Rent Act. Section 4 of this Act deals only with improvements and compensations. Take the Civil Procedure Act. A similar point is contained in section 5 of the Civil Procedure Act. That also deals with improvements and compensations. The Oudh Rent Act says "before or after the passing of the Act of 1921". The Civil Procedure Act makes no mention. Well this Bill goes farthest and says "An agreement between a landholder and a tenant is void, if and in so far as it purports (a) to prevent the tenant from acquiring a right of occupancy in land in accordance with the provisions of this Act; (b) to take away or limit the right of the tenant

to make improvements and to claim compensation for the same in accordance with the provisions of this Act " and so forth. I think, Sir, that this clause, going very much further than any hitherto passed by any legislature, and setting at naught every variety of contracts between a landlord and his tenant should not be allowed. I, therefore, support Khan Bahadur Maulvi Fasih-ud-din.

Khan Bahadur Shaikh Masud-uz-Zaman : I have an amendment for the deletion of the whole section 8.

Hon'ble the President : You had in that case better wait and move it later on.

Khan Bahadur Muhammad Fasl-ur-Rahman Khan : I rise to give my whole-hearted support to the amendment of Khan Bahadur Maulvi Fasih-ud-din. I had a motion for the deletion of the entire clause, but I will not move it now. I oppose this clause on purely legal grounds. My reasons are as follows :—Firstly I am of opinion that any contract the effect of which is to defeat the express provisions of any law is null and void under the Contract Act. This clearly shows that the clause under discussion is quite unnecessary. Secondly the present clause goes much beyond the corresponding section in the Oudh Rent Act. It also goes much beyond the corresponding section of the existing Agra Tenancy Act. My third reason against this clause is that . . .

Hon'ble the President : Are you opposing this clause or supporting the amendment ?

Khan Bahadur Muhammad Fasl-ur-Rahman Khan : I am supporting the amendment and opposing the present clause to show why the amendment should be accepted. I want to convince the House that this clause is a pernicious one. If this clause will not be altered in the light of the amendment, chaotic results will follow. All contracts, perfectly valid contracts, entered into between landlords and tenants, say, half a century ago, would become null and void if they contravene any provision of this Bill. If our laws are meant to command respect they should not be allowed to flout their predecessors. Entries in the *wajib-ul-arz* must also be respected. They are of long standing, and parties have got accustomed to them. My third reason against this clause is that, if you take into consideration the principles of jurisprudence and if you view this clause in the light of the said principles, you will agree with me in saying that a clause of this kind should not form part of the Act of a civilized country. Certainly, I am not in favour of allowing any new contracts of which the intention is to defeat the express provisions of this Bill, but I am strongly opposed to the nullifying of the old contracts entered into between the parties long before the passing of this Bill. For these reasons, Sir, I support the amendment of Khan Bahadur Maulvi Fasih-ud-din.

Hon'ble Sir Sam O'Donnell : I have listened with great attention to the speech of the honourable mover and to the speeches delivered by other honourable members in support of this amendment, and I noticed one very serious omission. None of these honourable members specified the agreements which they had in view. The honourable mover attributed the most terrible evils to this clause should it become law. He described it as an engine for the slow extinction of all the landlords, and yet in the whole course of his speech he never told us

[Hon'ble Sir Sam O'Donnelli.]

what were the agreements he had in view. He also stated that this was a most dangerous innovation. He seemed to think, that a clause of this kind, was quite unknown in modern legislation. That, of course, is a complete mistake. There are analogous provisions in Act II of 1901 and in the Oudh Rent Act, and there was an analogous provision in the Act of 1886. It is quite true that the Act of 1901 differed in one respect from this clause. This clause reproduces, word by word, the provisions of Act II of 1901, except in one respect. Act II referred only to agreements executed on or after April 1, 1900. Now, Sir, for that difference there was a clear reason. It was only about April 1, 1900, that the public came to know that the Government contemplated amending the Tenancy Act. It was therefore thought that it was unnecessary to include any provision touching agreements made before that date. It must further be remembered that Act II of 1901 made no radical changes in the law. It sought to make it more difficult for the landlord to eject his tenants, and to encourage the grant of long leases, but it retained the essential features of the old law. Now, Sir, in the Oudh Rent Act there is a provision as follows:—"Nothing in any contract made between a landlord and a tenant before or after the passing of this Act shall entitle the landlord to eject the tenant or enhance the rent otherwise than in accordance with the provisions of this Act." The Oudh Rent Act does not include the provisions we have included in this Bill regarding improvements and sub-letting. I take it that the reason simply was that the vital matters were enhancement and ejection and the other matters were considered to be of minor importance. In this clause we have followed Act II of 1901 and have included these other matters; but they are, as I said, of much less importance. Sub-clause (a) of clause (2) relates to agreements between landlords and tenants in so far as they purport to prevent the tenant from acquiring the right of occupancy in land in accordance with the provisions of this Act. Under this Bill occupancy rights can only be conferred with the consent of the landlord. Therefore this sub-clause is not a matter of very great importance. Then sub-clause (b) refers to improvements. The only substantial change we have made in this is we have given the right to statutory tenants to appeal to the courts if they are refused permission to make improvements. Sub-clause (c) is the same as in the Oudh Rent Act. Sub-clause (d) refers to sub-letting. We are proposing to give the statutory tenants a wider right to sub-let. That is simply a corollary to the change in his position. We are also proposing restrictions which will ensure that the land is not continuously sub-let. Sub-clause (e) refers to distraint. We have made no substantial change in the law as it stands. These, Sir, then are minor matters. The vital matter is sub-clause (c) which relates to agreements entitling a landlord to eject a tenant or enhance his rent otherwise than in accordance with the provisions of this Act, and that clause is identical with the provisions in the Oudh Rent Act.

Now, Sir, it may be that even if this amendment were made the intention of the Bill would not be defeated. The intention of the Bill is that every person who is in possession of land at the commencement of the Act including persons holding on seven years' leases should become a statutory tenant. But it is possible that the insertion of the words "after the passing of this Act" might throw

doubts on that position. If honourable members are not seeking to alter the Bill in that respect, if they do not wish that persons holding land on seven years' leases should not become statutory tenants, then, I think, they should make their intention clear. Our contention is that tenants who are non-occupancy tenants at the commencement of the Act and persons holding land on seven years' leases at the commencement of the Act should become statutory tenants. If that position is challenged I shall be quite prepared to argue the case. I hope honourable members will make their position clear in the course of the debate. At any rate, our objection to this alteration is this, that it might cast doubts on the intention and the policy of the Bill. It might raise the question whether holding land on seven years' leases should or should not become statutory tenants. We maintain that they should, and we maintain that it is unjust that they should not. Therefore we object to an alteration which might give rise to some doubts in the mind of the courts on this point.

Khan Bahadur Mr. Muhammad Ismail: The Hon'ble the Finance Member has raised two points against the proposed amendment of Khan Bahadur Maulvi Fasih-ud-din. One is that if this amendment is carried it may throw doubt on the position of statutory tenants. I doubt if that would be the result if this amendment is passed, because if you refer to the language of the clause, it runs thus:—"Every agreement which purports, or would operate, to restrict a tenant from enforcing or exercising any right conferred on or secured to him by this Act is void to that extent." The day this Act comes into force they will be in possession of the land automatically, and by the powers given under the law they will become statutory tenants. I do not think there can be any doubt about the position of statutory tenants. But the position of persons holding land under seven years' leases is entirely different. A number of amendments have been filed to section 19. They will be discussed later on and we will argue at the time when they will come for discussion.

Pandit Govind Ballabh Pant: I do feel that if the amendment moved by Khan Bahadur Maulvi Fasih-ud-din is carried it would affect leases that are subsisting at present and which have been given for a definite period; for by implication by means of these leases the parties have entered into a covenant between themselves to the effect that the rights of the tenants over these particular bits of land which are to be included in these holdings would come to an end after the expiry of a definite period, or, in other words, they have agreed that those parties will have no subsisting rights on these specific holdings after the lapse of the period stipulated in the agreement or the lease. So that the clause would affect the seven years' leases or even other leases that are for a definite period. Thus if a clause of this character is passed it may even affect leases that have been given for a period of less than seven years that may be subsisting at the time when this Bill takes the shape of law. So the amendment raises a very large issue, as if this amendment is passed then we will be taking out a considerable area from within the purview of section 19.

It has been said that it is against the principle of jurisprudence to introduce a clause like this. I am unable to understand the argument. The point is a very simple one and it is this, whether the legislature in the interests of the public and out of regard for public policy does

[Pandit Govind Ballabh Pant.]

or does not consider it desirable to have an Act of this character? If it holds that a public purpose will be served and public end will be attained by conferring statutory rights on the tenants, I think the legislature accepts the principle that in the interests of public weal it is necessary that statutory rights should be created and conferred. If it is so, then, I think, it is in the interests of public policy, it is in accordance with the principles of jurisprudence that everything else that interfered with this principle that the legislature in its wisdom considers to be right and sound, which militates against it, which is incompatible with it should be discarded. We have to see to it that public policy gains its end by means which are approved by the legislative body. So I am not prepared to accept that argument. If you hold that the scheme of the Bill in itself is defective, throw it out altogether. If you hold that the relations between landlords and tenants should be governed by contracts, by agreements, and not by legislative enactments, then it is better to say that there should be no legislation on these lines. But if it is held and accepted that the relations between the two parties have to be regulated by law, then I think everything else which militates against it, which is in contravention of that law, should be invalidated. I may also remind honourable members that the policy is not a new one, and even in this very Bill it does not find place here alone. If honourable members will refer to clause 32(2) of the Bill, they will find that it goes much further than this. Prior to 1901 leases used to be given for life-time and even in perpetuity; there was no restriction on the power of sub-letting held by the tenants, and they were even entitled to transfer their holdings. Now, by virtue of the provision made in clause 32(2) of the Bill it is being ruled that all the leases and transfers that were validly made under the law that existed at the time will become invalid after a certain length of time. Thus we are not only not invalidating an agreement which may have been of a doubtful character and against public policy, but we are declaring invalid an agreement which was valid and which was validly made under a valid law more than 25 or 30 years ago. This was not considered against the principles of jurisprudence, if I recollect correctly the trend of discussion that took place in the select committee on the point. The issue before the Council is, to my mind, a very simple one, and it is this: Do or do not the honourable members of this House desire that statutory rights be vested in every tenant, who has non-occupancy rights to-day? If they accept the principle of statutory tenure, then I submit it follows logically that it should be given effect to in every case. After all, what merit is there in saying that an agreement once made, although completely wrong, should be enforced? Moreover, present is not solitary case. We are having Acts passed regulating the management of factories. Suppose for a moment that a man has entered into an agreement that he will work for twelve hours a day for a term of three years and suppose also that afterwards an Act is passed saying that a person will be empowered only to engage labour for six hours a day. Can it be said that because an agreement has already been entered into, the man is bound, even after the passage of the Act, to work for twelve hours a day? Let us not make a fetish of a misconceived principle. Let us clearly envisage the issue which is before us. If in spite of all the restrictions that are

being made and if, also, in spite of all the privileges that are being acquired by the landlords in certain cases I freely admit most legitimately, they nevertheless fight shy of statutory tenure, let them discard the Bill altogether; but pray do not proceed in a surreptitious manner to defeat the object which we all proclaim to be before us.

Hon'ble the President: May I just intervene in the debate. It appears to me from the speeches made that the crux of the problem is the seven-year leases, and that will come under clause 19. I find also from certain speeches made that there are a number of amendments to that clause. Will it not therefore be in the fitness of things if we for the present postpone the consideration of this clause until we come to clause 19?

The further consideration of clause 8 was accordingly postponed.

CLAUSE 9.

9. Save as otherwise expressly provided by this Act, and save as otherwise provided by the Code of Civil Procedure, 1908, in the case of proceedings governed by that Code, anything which is by this Act required or permitted to be done by a landholder, may be done by an agent of the landholder authorized by him in this behalf; and process served on, or notice given to, such agent shall be as effectual for all purposes as if the same had been served on, or given to, the landholder in person; and all the provisions of this Act relating to the service of process on, or the giving of notice to, a party shall be applicable to the service of process on, or the giving of notice to, such agent.

Pandit Nanak Chand: I beg to move that the words "or a tenant" be inserted between "a landholder" and "may be done" in line 6 of clause 9 and between "the landholder" and "authorized." The object of this clause is that the landholders can act through their agents. By this amendment I want to give this privilege to the tenants as well. There are many well-to-do tenants who occupy very respectable positions in life, in Government service and in other walks of life and they sometimes find it difficult to attend to the work connected with their tenancies in courts, personally. I, therefore, think that this privilege might without any harm be extended to the tenants as well.

Hon'ble Sir Sam O'Donnell: I think this is an unnecessary amendment. The circumstances of the landlords and the tenants in this respect are quite different. A landlord may have a large estate, the management of which he cannot entirely undertake himself. He has therefore to act through an agent. That can hardly be said of an ordinary tenant. There are very few cases in which tenants appoint agents. For the purpose of court proceedings they have their legal representatives, but for ordinary purposes it seems to me quite unnecessary to lay down that a tenant can act through an agent.

Pandit Nanak Chand: I have nothing more to add.

Question, that the above words be inserted, put, and negatived?

Question, that clause 9 stand part of the Bill, put and agreed to.

CLAUSE 10.

10. There shall be, for the purposes of this Act, the following classes of tenants namely :—

Classes of tenants
enumerated

- (a) Permanent tenure-holders,
- (b) Fixed-rate tenants,
- (c) Ex proprietary tenants,
- (d) Occupancy tenants,
- (e) Statutory tenants,
- (f) Heirs of statutory tenants,
- (g) Non-occupancy tenants.

Lieut. Raja Durga Narayan Singh : I move that another class of "lessees with special privileges" be added to clause 10. While discussing this clause in the Select Committee I moved that persons, who hold with special privileges a long patta should be separately classified. Up to this time there is no such provision. If a zamindar grants a long-term patta to a tenant, the latter is classed as a non-occupancy tenant. In fact, the zamindar confers occupancy rights on the tenant when he grants him a long lease, as also rights heritable and transferable. But unfortunately such a tenant is recorded in the patwaris' papers as a non-occupancy tenant. The patwaris' papers are always brought into court for evidence, and therefore it is only fair and proper that such tenants to whom long leases with transferable and heritable interest have been granted by the zamindars should not be shown as non-occupancy tenants in the patwaris' papers, because it means a good deal of loss to them. I hope that Government will see its way to add a new clause under clause 10.

Khan Bahadur Shaikh Masud-uz-Zaman : I support the amendment of my friend Lieut. Raja Durga Narayan Singh. It is more or less a suggestion, and I think it is a very good one. There are leases partly agricultural and partly non-agricultural. There is no definition for such lessees. It has, however, been held by the High Court that such leases should be considered as civil contracts. So far as agricultural lessees are concerned, I think they should have special privileges, and for that reason I suggest that another class of "lessees with special privileges" be added to clause 10.

Hon'ble Sir Sam O'Donnell : It seems to me that this amendment is unnecessary, because under the Bill lessees will now either be statutory or non-occupancy tenants. At any rate, as I explained, that is our intention as regards people holding seven-year leases. That being so, it seems to me quite unnecessary to make any special provision in this clause for lessees. If the object of honourable mover is in a round-about way to raise the same issue—

Lieut. Raja Durga Narayan Singh : No.

Hon'ble Sir Sam O'Donnell : If that is not the object, I suggest that this amendment is really not required.

Lieut. Raja Durga Narayan Singh : I regret very much to say that what I said has been wrongly understood, as I had no idea of mixing seven-year leases with long-term leases. I simply wanted to point out that if a zamindar grants a long term lease to a tenant, then after his death his son, who succeeds to tenancy, shall be classed as "statutory tenant." He will not be a statutory tenant, he will be more than

a statutory tenant because he will have the right of inheritance, and the patwari will record him as a non-occupancy tenant. I think if Mr. Burn will kindly inquire he will find such cases not only in the Farrukhabad district but in other districts as well where the patwaris are recording them as non-occupancy tenants up to this time and up to this very hour. So I wish that this class of tenant who gets special privileges from his landholder should be recorded as a lessee with special privileges.

Hon'ble Sir Sam O'Donnell: I still maintain that this is unnecessary. As I said before, a lessee, whatever the period of the term may be, will now be either a statutory tenant or a non-occupancy tenant, and these classes are provided for in this clause.

Question put, that the words "lessees with special privileges" be inserted.

The House divided. Ayes, 21; Noes, 64.

Ayes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Sakseena.
Babu Bhagwati Sahai Bedar.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Pandit Jhanni Lal Pandey.

Thakur Har Prasad Singh.
Thakur Keshava Chandra Singh Chaudhri.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anand.
Pandit Yajna Narayan Upadhyaya.
Rai Bahadur Thakur Hanuman Singh.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Babu Sita Ram.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. B. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hollowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad Ejaz Rasool Khan.
Raja Bahadur Brij Narayan Rai.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Lala Kishan Lal.
Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Lala Babu Lal.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib
Lala Dhakan Lal.

Rao Sahib Kunwar Sardar Singh.
Raja Narayan Pratap Singh.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Jai Narayan Roy.
Zud-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Raja Shankar Sahai.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmad Ali Khan Alvi.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Asraf.
Shaikh Abdus Samad Ansari.
Rai Bahadur Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Lieut. Raja Shaikh Imtiaz Russel Khan.
Raja Jagannath Baksh Singh.
Mr. E. M. Souter.
Dr. Ganesh Prasad

Khan Bahadur Hafiz Hidayat Husain : I beg to move that sub-clauses (e) and (f) of clause 10 be omitted.

In moving this I am aware that the Government as well as the Swarajists and some of the members of the Zamindar party are committed to the creation of statutory tenancy. My point is, firstly, has any case been made out in this province for the creation of this class of tenancy? Secondly, do the zamindars as well as the tenants like it? And thirdly, is it in the interests of the petty zamindars that life tenancy should be created? Now, this creation of statutory tenancy is certainly one of the main reasons why this law is on the anvil. The idea of statutory tenancy for the province of Agra takes its inspiration from the Oudh Rent Act, which had special reasons of its own for the creation of this class of tenants. In introducing the Oudh Rent Act the Government referred to the "Oudh compromise" under which the Government was debarred from creating occupancy tenants in the province of Oudh. Now, Sir, in order to appease the Oudh tenantry, 98 per cent. of whom were non-occupancy tenants, a half-way house was thought out and the idea of life tenancy was the result. The particular reason why this was thought out was that at that time, in 1919 and 1920 there was such unrest among the tenants of Oudh that something was required to be done in order to satisfy them, and statutory tenancy was the remedy. What, however, are the conditions prevailing in this province? Here the essential condition of tenancy is occupancy tenure. I have got figures from which it will appear that about 28 million acres of land are subject to Act II of 1901. Now 11 millions of this are under occupancy and ex-proprietary tenure. Over 7 million acres are held by tenants of over twelve years' standing: this is also occupancy, and 5 millions are otherwise secured. Thus, Sir, the only portion unsecured is 5 millions out of 28. In Oudh it was 80 per cent. of land that was unsecured. In Agra it is barely 15 per cent. Figures also show that at least 15 per cent. of the area that was covered by non-occupancy tenancy before 1901 is now covered by occupancy tenancy, and therefore when the time for revision of the present Bill comes, which will be say, about two decades hence, all these non-occupancy tenants existing now will have secured occupancy rights. Now, Sir, under section 17 of the present Bill rights of occupancy may be purchased and also otherwise conferred by the zamindar, and by this means acquisition of occupancy rights will be further accelerated. This provision of life tenure will hit small proprietors hard. We have got about 7 lakhs of land-owners, and out of this about 6½ lakhs are proprietors who pay revenue between Rs. 5 and Rs 100. The condition of most of these petty landlords is pitiable in the extreme. Many of them live from hand to mouth. Their life, and particularly the life of all zamindars generally, was very aptly described by the great poet Akbar of Allahabad when he said:—"Muhtaj dar i-vakil wo mukhtar hain ap—Sare amle ke nazardar hain ap—Awara wo muntashir hain manind ghular—Malum hua ki zamindar hain ap." Life tenancy is not liked by the zamindars because it encroaches upon their rights. They fear that a portion of their proprietary right is being given away to tenants who occupy land at their will, thus reducing the value of their property and their income. Then, Sir, life tenancy is not liked by the tenants. What they like is occupancy tenancy. They do not very much care for life tenancy. What the Indian mind does like is something that might be left over

for the generations to follow. Consequently this life tenancy is not acceptable to the tenants themselves.

Then, Sir, I would point out that the idea that non-occupancy tenants are introduced for the purpose of rack-renting and therefore to avoid rack renting and ensure fixity of tenure statutory tenancy should be introduced is wrong. Take the case of ordinary house tenancy. Tenants of houses occupy houses subject to the provisions of section 106 of the Transfer of Property Act, and they can be ejected after fifteen days' notice, but do not such tenants of houses continue to live for years and years in the same house? If the same way, if a tenant is acceptable to the landlord he can continue to occupy land for many years without any difficulty.

Then, Sir, statutory tenancy does not either imply permanency. Life tenancy will be subject to acquisition under section 40 and liability to enhancement of rent periodically. I therefore think that it is neither in the interest of the landlords nor that of the tenants, nor even in the broader interest of future administration of land, to create life tenancy. I therefore move for the omission of these clauses.

Hon'ble Sir Sam. O'Donnell: The honourable member who has just spoken has taken a very extraordinary line. The conferment of statutory right is not an incidental feature of this Bill; it is the very essence of the Bill. Therefore if the honourable member takes the view that statutory rights should not be conferred, he ought to have put forward that same view on the second reading. When I brought forward the motion for the reference of the Bill to the Select Committee I remember that the honourable member did speak. I do not remember exactly what he said, but I certainly do not think that he was as opposed to the grant of statutory rights then as he is now.

Khan Bahadur Hafiz Hidayat Husain: I have got my speech and I may inform the Hon'ble the Finance Member that I did oppose it then.

Hon'ble Sir Sam O'Donnell: I accept the statement that he was as opposed to it then as he is now. But I do remember that when the motion was put to the vote there was only one member who voted against it, and that member was certainly not the honourable member who has just spoken. That being so, it seems to me quite unnecessary to answer the honourable member's arguments at any length. I gave my own reasons for the proposal when I introduced the Bill at considerable length. It would not be difficult for me to reply to these arguments, but it would serve no useful purpose to cover again the same ground which I traversed on a previous occasion. Moreover, I am certain that this amendment has no chance of being accepted by this Council.

Rao Sahib Abdul Hameed Khan:

جناب صدر —
 اس وقت خان بہادر حافظ ہدایت حسین صاحب کی اس ترمیم کے پیش
 ہو جانے سے ایک موقع ملا ہے کہ اس قانون کے متعلق اس کی جو کچھ خاص
 خصوصیات ہیں ان کو ذہن میں رکھتے ہوئے بحث کی جائے۔ جناب والا -
 اس سے انکار نہیں ہو سکتا کہ اس قانون کی روح جیسا کہ ایچی آنریبل فائینڈس
 میمبر صاحب نے فرمایا ہے کاشتکاران کے ایسے حق حین حیاتی کا دیا جانا ہے -

[Rao Sahib Abdul Hameed Khan.]

لیکن اس کے یہ معنی کسی طرح سے نہیں ہو سکتے کہ اب اس مسئلہ پر کوئی غور و خوض نہیں کیا جاسکتا یا اب اس میں کوئی ترمیم نہیں کی جاسکتی - قانون کی روح بہر حال انسان کی روح سے زیادہ قیمتی نہیں ہو سکتی - (تہقہ) - ہمارا روزمرہ کا تجربہ اور مشاہدہ ہی کہ دیکھتے ہی دیکھتے نرا سی دہر میں انسان کی روح اس کے قلب سے پرواز کر جاتی ہے اور کون کہہ سکتا ہے کہ جتنے میمبر صاحبان یہاں تشریف رکھتے ہیں ان میں سے کتنے صحیح و سلامت اپنے گھروں کو پہنچیں گے - (تہقہ) - انسان کو حق حاصل ہے کہ وہ اپنے ہاتھ اور دماغ کی ہڈائی ہوئی چیز کو جس وقت چاہے فنا کر دے •

جناب والا - ہمارے سامنے سوال یہ پیش ہے کہ قانون کا اصل منشا کیا ہے - ظاہر اس کا اصل منشا وہی ہے جو اس سے پہلے کے قانونوں کا منشاء بنایا گیا اور سمجھا گیا ہے یعنی کاشتکار کے لینے مدت میعاد کا تین - اب دیکھنا یہ ہے کہ وہ منشا پچھلے قانونوں سے پورا ہوا یا نہیں اور یہ قانون باوجود اس کے کہ یہ کاشتکاروں کو حق حین حیاتی دلوا رہا ہے - یہ کاشتکار کے لینے مدت کاشت کے تین کا باعث ہوا یا نہیں یا وہ تمام مصیبتیں وہ تمام سختیوں اور آسائشیں جو زمیندار اور کاشتکاران کے درمیان پیدا کی گئی ہیں اور جس کے وجود کو [struggle for supremacy] کہا جاسکتا ہے ان کا خاتمہ اسی قانون کے ذریعہ سے ممکن بھی ہے - اگر وہ سختیوں دور ہوتی ہیں تو میں کہوں گا کہ حق حین حیاتی دیکھنے اور ضرور دیکھنے لیکن مجھے بے حد افسوس ہے ساتھ عرض کرنا پڑتا ہے کہ جہاں تک میں اس پر غور کرتا ہوں میری مایوسی بڑھتی جاتی ہے - جناب والا - اول تو میرا عقیدہ اور خیال یہ ہے کہ زمیندار اور کاشتکار کے تعلقات صرف اسی شکل میں بہتر اور خوشگوار ہو سکتے ہیں کہ ان کو قانونی تیوں میں نہ جکڑا جائے بلکہ ان کو بیٹے اور باپ کی طرح ایک کو دوسرے کے رحم پر چھوڑا جائے لیکن اس کو جانے دیکھنے خود زراعت کی بہتری - بہبودی اور ترقی کا مقصد بھی اس طرح حاصل ہونا عوا نظر نہیں آتا - اس کے ساتھ ہی میں یہ عرض کرنا کہ کل برسوں سے جو مباحثات اس قانون پر ہو رہے ہیں اور ہونگے اس میں اس بڑے اصول کو نظر انداز کر دیا جانا ہے کہ زمیندار زمین کا مالک ہے اور غالباً اس مسئلہ پر اس نقطہ نگاہ سے گفتگو نہیں کی جاتی ہے - ہمارے زمیندار میمبر صاحبان دوسرے قسم قسم کی دلیلیں پیش کرتے ہیں - خوشامد کرتے ہیں - انتہا کرتے ہیں - وہ کہتے ہیں کہ انصاف یہ چاہتا ہے - سخاوت یہ چاہتی ہے کہ اس بن نصیب زمیندار کو بھی کوئی حق دیا جائے لیکن زمیندار کے لینے یہ نہیں کہا جاتا کہ یہ زمین کا مالک ہے اور اس کو اپنی ملکیت پر بھی کوئی حق ہونا چاہیئے - کاشتکار کے لینے حق حین حیاتی کے متعلق میں یہ خصوصیت سے عرض کرنا کہ جتنے جلسہ ابھی تک ہوئے ہیں خواہ زمینداروں کے یا کاشتکاروں کے - ان میں ہر دور اس کے خلاف آواز بلند کی گئی ہے اور اس قسم کے جلسہ بھی پہلک کی عام آواز معلوم کرنے کا ایک خاص ذریعہ ہے - ان میں سے کسی نے اس پر پسندیدگی کا اظہار نہیں کیا نہ اس سے زمینداران

خوش ہیں اور نہ کاشتکاران یا اُن کے دوست خوش ہیں - ایسی حالت میں ایسے قانون پر ردیہ اور وقت ضایع کرنا قطعی عیث اور فضول ہی - آپ دیکھیں گے کہ بہت ہی جلد اِس میں ترمیمات کا سلسلہ شروع ہوگا اور اِس کے بعد چند ہی روز میں اِس کو از سر نو دوبارہ تبدیل کرنے کی ضرورت محسوس ہوگی - میں پوری ذمہ داری محسوس کرتے ہوئے یہ عرض کروں گا کہ درحقیقت اِس میں بے حد جلدی کی گئی ہے اِس قدر زبردستی و اہم تبدیلی سے پہلے ہبلک کو کافی وقت غور کرنے اور رائے ظاہر کرنے کا دیا جانا ضروری تھا - آج زمینداروں سے اُن کی چیز چھینی جا رہی ہے اور اِس سے کاشتکار یا اُن کے نام نہاد دوست بھی خوش نہیں ہیں *

دوسری بات میں یہ عرض کروں گا کہ زراعت کے متعلق ہمارے صوبے میں روز بروز بیداری بڑھتی جا رہی ہے جو فطرت زراعت کی طرف سے کل تک تھی وہ آج نہیں ہے اب زمین کی صلاحیت اور قابلیت کا احساس بڑھتا جاتا ہے نیز اِس وقت عنقریب رائل کمیشن (Royal Commission) زراعت کے متعلق آ رہا ہے تاکہ اِس ملک میں زراعت کی ترقی اور بہبودی کے متعلق ضروری رپورٹ کرے اِن سب باتوں کا خیال کرتے ہوئے کاشتکاروں کو اتنے بڑے حق کا دیا جانا جبکہ ہمیں اتنے بڑے کمیشن کی رائے سننے کا بھی موقع نہیں ملا ہے حد زیادتی ہے اگر یہ کمیشن بھی طے کرنا کہ ہماری زراعتی مشکلات کا انسداد اِس طرح پر ہو سکتا ہے تو میں حق حین حیاتی یا حق موروثی کی تائید کرنے کے لیئے تیار ہونا لیکن اِس وقت میں یہ سمجھتا ہوں کہ نہ تو گورنمنٹ نے نہ ہمارے - وراچسٹ دوستوں نے اور نہ خون زمینداروں نے اِس مسئلہ پر کافی غور کیا ہے کہ درحقیقت ہندوستان کی زراعتی بہبودی اور ترقی کیا چاہتی ہے اور ہمارے اِس راستہ پر چلنے سے جو اختیار کیا جا رہا ہے کامیابی ہو سکتی ہے یا نہیں - اِس وقت میں یہ سمجھتا ہوں کہ بہت جلدی کی گئی ہے اور نہایت جلد بازی سے کام لیا جا رہا ہے اِس لیئے میں اُس کی مخالفت کرتا ہوں کہ حق حین حیاتی کاشتکاروں کو دیا جائے اِس سے پہلے کہ اُس کے بارے میں ہم رائل کمیشن کی رپورٹ نہ پڑھ لیں یا کاشتکاران کے دوست اِس کا اعلان نہ کر دیں کہ کاشتکاروں کے لیئے اُس کے بعد کوئی مصیبت باقی نہیں رہ سکتی *

تیسری بات یہ ہے کہ قانون کا منشا یہ بتلایا جاتا ہے کہ کاشتکاروں کے لیئے مستقل زمانہ کاشت کا اہتمام کرنا - جناب والا - انسان کی زندگی سب سے بڑی غیظ مستقل چیز ہے اگر کوئی میعاد دس - بیس یا پچیس سال کی ہوتی تو یقیناً کچھ استقلال ہو سکتا تھا - کاشتکاروں کے دوستوں کو یہ بات نظر میں رکھنی چاہیئے تھی کہ پتوں کی میعاد وسیع تر ہو جائے تاکہ کاشتکاروں کو کوئی مستقل زمانہ میسر آتا - لیکن اِس قانون نے زمین کے پتوں کی میعاد ۵۰ - ۷۵ یا سو سال تو نہیں کی بلکہ انسان کی زندگی سے یہ جڑا کھینچ لیا ہے کوئی نہیں جانتا کہ انسان کی زندگی کی کیا میعاد ہے کسان غریب صبح کو ہل اور پیل لیکر جنگل کو جاتا ہے لیکن کون کہہ سکتا ہے کہ وہ زندہ واپس ہوگا بسا اوقات

[Rao Sahib Abdul Hameed Khan.]

ایسا ہوا ہے کہ لونگی یا نمونہ ہوا اور آنا ناداً میں ختم ہو گیا ذرا غور تو کیجیئے کہ کیا تعین میعاد ٹاشٹ ہی - مدد میعاد ٹاشٹ کو اس طرح پر طے کرنے سے کاشتکار کے ساتھ اتنا برا ظلم کیا گیا ہے کہ وہ اور ان کی اولاد اس بل کے پاس کرنے والوں کو ٹھنڈا پانی پی پی کہ کوسینگے •

Hon'ble the President :

میں سمجھتا ہوں کہ راؤ صاحب اس تقریر کے بعد اس بل کے خلاف ووٹ دیں گے

Rao Sahib Abdul Hameed Khan :

یقیناً - کوئی بل اتنی عجلت میں پاس نہیں کیا گیا - جن لوگوں کے متعلق یہ قانون بنایا جا رہا ہے ان میں سے دو فیصدی بھی اس زبان سے واقف نہیں ہیں جس میں یہ اس وقت تک میسر ہی یہ امر تاریخ میں درج ہو گا کہ ایک مدعی تہذیب گورنمنٹ نے سنہ ۱۹۲۶ء میں اتنی بڑی جماعت کے لیے ایک قانون بنایا اور نافذ کیا حالانکہ وہ قانون ان کی زبان میں ترجمہ بھی نہ ہو سکا تھا اور ان میں سے دو فیصدی آدمی یہ سمجھ سکتے تھے کہ اس میں کیا ہے •

جناب والا - قبل اس کے کہ میں اپنی تقریر ختم کروں چاہتا ہوں کہ ایک مرتبہ اور صفائی کے ساتھ ظاہر کر دوں کہ حق حین حیاتی کا دیا جانا کاشتکاروں کے لیے کافی نہیں بلکہ مضر ہے - بجائے اس کے اگر پٹوں کی میعاد میں اضافہ کیا جاتا اور پٹوں کو لازمی کر دیا جاتا تو یقیناً زیادہ بہتر اور صحیح ہوتا •

Rai Bahadur Lala Mathura Prasad Mehrotra : Sir, I rise to oppose the amendment moved by my honourable friend Khan Bahadur Hafiz Hidayat Husain. I do not wish to go into the merits of the Bill at this stage, as I consider that it is not a proper occasion for it, but as regards this particular clause, I submit that it is an essence of the Bill, and I consider that the Bill has been introduced for this very purpose alone. We have heard several times that the Oudh Rent Act was quoted and several of its sections have been cited as an instance, but it is forgotten that this very problem is the essence of the Oudh Amendment Act and ought to be equally regarded for the Rent Act of the Agra Province. As regards the self-cultivation or *sir*, I am perfectly at one with the honourable members that the zamindars should have extensive rights. As for improvement of agriculture, I am again at one with the honourable member that the zamindars should have ample opportunities, but if they are going to oppose the grant of statutory rights, I at least for one cannot agree with them in the matter. I therefore oppose the amendment.

At this stage the Council adjourned for lunch.

After the recess—

Hon'ble the President called in Babu Bhagwati Sahai Bedar to speak in Urdu under rule 14.

Babu Bhagwati Sahai Bedar :

جناب صدر —

میرا ارادہ آج اسپیکر دینے کا نہیں تھا اور میں نے خیال کیا تھا کہ اس ٹیننسی بل کے آرڈر کوئی اسپیکر نہ دونگا لیکن جب میں نے یہ دیکھا کہ میرے دوست حافظ ہدایت حسین صاحب نے ایک امینڈمنٹ پیش کی ہے جس سے وہ جملہ باتیں جو کاشتکاران کو عطا کی گئی ہیں وہ بالکل خارج ہو جائیں گی تو میں اپنا فرض سمجھتا ہوں کہ میں بھی کچھ عرض کروں۔ جناب والا - کم و بیش اس قانون کا منشاء یہ تھا کہ اس ایکٹ کے ذریعہ سے کچھ کچھ کاشتکاروں کو دیا جائے اور کچھ کچھ زمینداروں کو دیا جائے۔ بہر کیف گورنمنٹ کا کم و بیش یہ منشاء تھا کہ دونوں کے آنسو پونچھ دیئے جائیں لیکن اب یہ دیکھا جا رہا ہے کہ کاشتکاران کو کچھ نہیں دیا جا رہا اور زمینداران سب لینے لیتے ہیں تو میرے خیال میں اس بل سے زیادہ خرابی اور کچھ نہیں ہو سکتی۔ اگر یہ خیال کیا جاتا ہے کہ یہ ایکٹ بالکل ناقص ہے نہ اس سے کاشتکاروں کو کچھ ملے نہ زمینداروں کو کچھ ملے تو پھر اس ایکٹ کو کونسل میں نہ آنے دیا جانا تو بہتر تھا جس وقت یہ بل یہاں پیش ہوا تھا اُس وقت یہ کسی نے نہیں سمجھا تھا۔ اب جبکہ یہ بل ہمارے سامنے ہے ہمارے زمیندار دوست یہ نہیں چاہتے کہ کاشتکاران کو بھی کچھ مراعات دیں ہم جانتے ہیں کہ آپ کی میجسٹریٹری ہی ہم جانتے ہیں کہ آپ زیادہ تعداد میں ہیں۔ ہم جانتے ہیں کہ موقع موقع پر ہمارے زمیندار صاحبان گورنمنٹ پر بھی پشتیاں کر جاتے ہیں (تہقہہ) اس کے یہ معنی نہیں ہیں کہ آپ اتنی کثرت تعداد سے فائدہ اٹھائیں۔ آپ کو کم سے کم یہ خیال ہونا چاہیئے کہ آپ کو دیہات میں جا کر اُن بھائیوں کو منہ دکھانا ہے کہ جن کی نمائندگی آپ یہاں کر رہے ہیں۔ آپ کا فرض یہ ہے کہ جس شاندار تاریخ سے آپ گرے ہوئے ہیں اُس کو مت گھٹائیں۔ آپ کی فلاح و بہبود

Hon'ble the President : You must address the Chair.

Babu Bhagwati Sahai Bedar : Very well, Sir.

زمیندار صاحبان کا جو تعلق کاشتکاران کے ساتھ ہونا چاہیئے وہ باپ اور بیٹے کا ہونا چاہیئے۔ میں کہہ سکتا ہوں کہ کوئی باپ آج دنیا میں ایسا نہیں ہے جو یہ کہہ سکا کہ میں پہلے روٹی کھالوں بعد کو میرا بچہ کھا لے گا۔ اگر وہ یہ کہتا ہے کہ میں پہلے اپنا پیٹ بھراؤں میرے بچے کا پیٹ پیچھے ہو جائیگا تو حقیقت میں وہ باپ نہیں ہے۔ اگر زمیندار صاحبان یہ کہتے ہیں کہ یہ ہمارے زمین میں ہے ہمارا اس پر حق ہے ہم جیسے چاہیں گے ویسے کریں گے۔ جس کاشتکار کو چاہیں گے دیں گے اور جس طریقے سے چاہیں گے وصول کریں گے تو صاف کہہ دیجئے کہ کاشتکاران کا کوئی حق نہیں ہے۔ یہ تمام حق ہمارا ہے۔ آپ کا فرض زمیندار صاحبان کا فرض اگر سچ ہو چو تو یہ تھا کہ گورنمنٹ سے

[Babu Bhagwati Sahai Bedar.]

ہمارا راست لڑتے لیکن یہاں یہ کیفیت ہی کہ اگر گدھے سے بس نہ چلا تو گدھنیا کی گوشمالی فرما دی (تہقہ) - جہاں تک میرا خیال ہی زمیندار ہو کر نہیں چاہتے کہ گورنمنٹ سے لڑیں وہ سمجھتے ہیں کہ اس طرح پر ہماری لڑائیاں کب تک رہیں گی - ہمارے اور گورنمنٹ کے تعلقات بہت پرانے چلے آتے ہیں ہم انہیں کیسے چھوڑ دیں تو ایسی صورت میں کم سے کم آپ کو اپنی [position] پوزیشن پر غور کر لینا چاہیئے کہ ہم کہاں پر ہیں - ہم کو یہ دیکھنا چاہیئے کہ ہم واقعی ایمانداری سے کام کر رہے ہیں یا نہیں - میں زمیندار صاحبان کی ایمانداری پر الزام نہیں لگانا بلکہ کم سے کم یہ سمجھتا ہوں کہ یہ جو کچھ بھی ہو رہا ہے وہ اس ترکیب سے ہو رہا ہے کہ اپنا پیٹ بھر جائے چاہے دوسرا کہیں جائے ورنہ میری سمجھ میں نہیں آتا کہ یہ ایمنڈمنٹ کس وجہ سے پیش کیا گیا ہے - ہماری پارٹی کی پوزیشن یہ ہے کہ ہم میں زمینداران بھی ہیں اور کاشتکاران بھی ہیں - ہماری پارٹی کی جو اپینین (opinion) ہوتی ہے وہ well considered ہوتی ہے نہ ہم کاشتکاروں کے ساتھ ہیں نہ ہم زمینداروں کے ساتھ ہیں ہم تو حق کے ساتھ ہیں کیونکہ ہمارے یہاں دونوں طرح کے صاحبان موجود ہیں اور ہمارے یہاں سے جو رائے نکلتی ہے وہ واقعی ایمانداری کے اُپر ہوتی ہے اور ایسی ہوتی ہے کہ دونوں کو acceptable ہو - اگر ایسا نہ ہوتا تو آج ہماری پارٹی کا نسمہ ڈھیرا ہو گیا ہوتا *

صاحبان - یہ ایمنڈمنٹ ایسے ہی کہ اس پر مجھے ایک نصہ یاد آنا ہے (تہقہ) ایک مرتبہ ایک مولوی صاحب نے ہانڈی چڑھائی تو جب شور بہ تیار کیا اور تیار کر کے انہوں نے پاس رکھا اُنہوں نے نماز کا وقت ہو گیا اور وہ نماز پڑھنے لگے - اُدھر سے ناک لگاتی ہوئیں ایک بلی تشریف لائیں تو مولوی صاحب کو فکر ہوئی کہ کوئی ایسا کام کیا جائے کہ جس میں نماز میں بھی خطا نہ ہو اور بلی بھی بھاگ جائے آخر ایک ترکیب اُن کی سمجھ میں آئی کہ اُنہوں نے الحمد للہ رب العالمین پڑھتے وقت لفظ بل کو بڑے زور سے پڑھ دیا کہ بلی بھاگ گئی (تہقہ) - ایسی ترکیب سے بلی بھی بھاگ گئی اور شور بہ بیچ گیا نماز بھی نہ قضا ہوئی - تو میں یہ عرض کروں گا کہ میرے زمیندار دوست اُن کاشتکاروں کے بھی خواہ بھی بندہ ہوئے ہیں کہہ جاتے ہیں کہ اُن کی نلاح و بہبود چاہتے ہیں اور یہ ایمنڈمنٹ بھی پیش کرتے جاتے ہیں - آپ کا ایمنڈمنٹ تو ذرا سا ہے لیکن کسی کی جان گئی آپ کی ادا قہری آپ نے دو لفظ کہہ دیئے اُن کاشتکاروں کا خاتمہ ہو گیا *

مردی جیوں پر لکھی ہے تیرے وصال کی شب

نہ اپنے پیروں سے تھکوا میرا صبر ڈیکھو

Raja Jagdish Prasad Sahib: I rise to oppose the amendment of my honourable friend Khan Bahadur Hafiz Hidayat Husain. In the course of my speech on the occasion of the introduction of this Bill in March

last I indicated that I favoured the grant of long-term leases more than the concession of life tenancy to the non-occupancy tenants, but, Sir, since that time I have become a convert to the view that it is high time that the zamindars of the Agra Province should concede life tenancy to the non-occupancy tenants. My reasons are more than one. Firstly, we the zamindar members must realize that there is a section of public opinion which favours the concession of occupancy rights on all non-occupancy lands. On the other hand, there is the conservative section of zamindars who feel that not only the existing non-occupancy land should continue as such, but some of them feel that even occupancy land might be converted into non-occupancy tenure. The concession of life tenancy is a compromise or *via media* between the two sections. So the first reason in favour of the concession of life tenancy is that it is a compromise between the two sections of public opinion. The second reason is that the zamindars must concede fixity of tenure, because after all it is in their interest that they should have a contented tenantry. Thirdly, we the zamindars must consider that after all in lieu of the life tenancy that we are conceding we are getting some privileges: we are getting the privilege of *sir* rights; we are getting the privilege of acquiring land for self-cultivation and other purposes, and the privilege that no more occupancy rights will accrue in the future. There are other minor concessions which I need not mention. But some zamindar members feel that these concessions are not enough. Of course it is open to them to bring forward amendments to those sections of the Bill in order that they may secure more concessions, but I think it will be the height of folly to take out the concession of life tenancy from this Bill. The attitude of the Government seems to be that if this concession of life tenancy is not conceded, then they will perhaps withdraw the Bill. In my opinion, Sir, if we the zamindar members are unable to secure more concessions in the rest of the Bill, of course it is open to us at the last stage to throw out the Bill. But to wreck the Bill at this stage on the score that life tenancy should not be conceded is, I think, premature. I am therefore of opinion that we should concede life tenancy, and in lieu thereof try to secure more concessions to the zamindars. With these words I oppose the amendment.

Thakur Manjit Singh Rathor: I had no desire to speak on the Bill at this stage but I find that the amendment moved by my friend Khan Babadur Hafiz Hidayat Husain is so drastic and so thoroughgoing that no one who has got the interests of peace and progress at heart, no one who desires that agriculture should improve, no one who desires that tenantry should be contented can sit with silence. I therefore stand before you, Mr. President, to lodge my emphatic protest against this amendment. I think that if these two sub clauses (e) and (f) are removed from this section, then the very life of the Bill will be removed so far as the tenants are concerned. If you desire that this Bill should emerge out of this House in the form of a dead body without life, then this is a different matter. I am sure that no section of the House, no responsible section of the House, desires to take away these important rights of the tenants. The zamindars have been anxious to safeguard their interests. We have also been anxious to safeguard the interests of the zamindars so far as their interests have been legitimate and lawful, but if they want to turn into practice the saying "heads we win and tails you lose," if they desire

[Thakur Manjit Singh.]

that the tenants should be removed from their holdings and should be reduced to the position of serfs and slaves, if they desire that the tenantry should take to Bolshevism, that is a different matter. In my opinion no sensible section of the House can support the amendment as proposed by my honourable friend Hafiz Hidayat Husain. Fortunately it appears that the section of thinking zamindars in this House are opposed to this amendment; they have lodged their protest; they have declared that they are in opposition to the amendment as proposed. I hope that when the question is put, all thinking men, all those who desire that the peasantry should prosper as well as the zamindars should prosper, will vote for the total rejection of this amendment. With these words I beg to oppose the amendment as proposed by Khan Bahadur Hafiz Hidayat Husain.

Rai Sahib Chaudhri Sheoraj Singh: I rise to give my whole-hearted support to the amendment moved by Khan Bahadur Hafiz Hidayat Husain. I do so, not so much in the interest of the zamindars as in the interest of the tenants. The zamindars outside the Council are dissatisfied with this section because every tenant, though he be one year old, will be in possession of the land for his whole life and there would be no room left for the zamindar to use his discretion as regards satisfactory and unsatisfactory tenants. The agricultural condition will therefore be stagnant and stationary. Besides, the zamindar will lose his prestige and will be reduced to the position of a mere money-lender. As regards the tenants, they will not be in a position to acquire occupancy rights, which in the present condition they are acquiring more and more, so much so that within the last twenty years occupancy rights have increased by more than 13 per cent. I admit that this life tenancy is a feature of the Oudh Rent Act, but honourable members here are to see the difference between the conditions in Agra and the Oudh Province. As honourable members are aware, there are petty zamindars here in Agra Province. The zamindars of Agra resemble cultivators more than proprietors. Fifty-six per cent. of them pay land revenue from Re. 1 to Rs. 25 and there are as many as 86½ per cent. who pay land revenue up to Rs. 100 and under. So I submit, Sir, that this life tenancy will be ruinous for these petty zamindars. My swarajist friends have questioned the honesty of zamindar members. I ask them on what principle they oppose the zamindars, when the question of the Board of Revenue's circular letter regarding ejectment was pressed in the Council. They made a living law dead, and I ask them what will they do when section 19 and section 276 will come before them? We realize that we are as much representatives of the tenants as of the zamindars, but I submit, and I challenge, that they do not realize that they are also representatives of the zamindars. The swarajists themselves have attached the life tenancy scheme, why not then come back much sounder scheme of long leases of 15 or even 20 years. With these few words, I support the amendment.

Raja Sri Krishan Dutt Dube: I rise to oppose the amendment of my honourable friend Khan Bahadur Hafiz Hidayat Husain. If this amendment is accepted it will simply break the backbone of the Bill. If this small right of life tenancy is conceded to the tenants it will be a

generous act on our part. If we oppose this, a proverb comes to my mind which was written by a poet. (Hindi couplet.)

बपाया किये जान मजदूर । पेट भरना पर उनका दूर ॥
उड़ते माल घनिक भरपूर । मलाई लहू, मोतीचूर ॥

This is all, and after this

बड़ा अच्छे ! बड़ा अच्छे !!

Probably somebody must have known this. So, if the amendment is passed it would affect our generosity, and we must say in that case that we are not the fathers of our tenants but their enemies. So, with the exception of a few of us, I hope we will extend our generosity to the poor tenant who is looking forward to our support when concessions for him come before this House. He has sent us here so that we may help to win concessions for him; he has not sent us here to cut his throat in this Council. I request the Council to overthrow the amendment and to let us give a little boon or satisfaction so that the tenants may bless us in future.

Motion was here made for the closure of the debate.

Question, "that the question be now put", put, and agreed to.

Khan Bahadur Hafiz Hidayat Husain : I have got nothing to add to what I said before. Any opposition that has been offered to my amendment has been more sentimental than reasonable, and I will not therefore say anything with regard to sentiments expressed.

Hon'ble Sir Sam O'Donnell : I too have nothing to add to what I have said and to what has fallen from the honourable members who have opposed the amendment.

Question put that sub-clauses (e) and (f) stand part of the Bill.

The House divided. Ayes, 73; Noes, 5.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yore.
Mr. E. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. B. J. S. Dodd.
Colonel A. W. R. Oochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchanroder.
Raja Muhammad Ejaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Mr. H. O. Desanges.
Mr. H. David.
Babu Kham Chand.
Babu Narayan Prasad Arora.

Babu Sangam Lal.
Babu Mohan Lal Sakseena.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Rai Jagdish Prasad Sahib.
Pandit Nanak Chand.
Lala Babu Lal.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Pandit Jhanni Lal Pande.
Thakur Keshava Chandra Singh Chaudhri.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Raj. Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Bavi Pratap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.

Ayes.

Bhaya Hanumat Prasad Singh.
 Pandit Har Govind Pant.
 Mr. Mukandi Lal.
 Raja Shankar Sahai.
 Dr. Jaikaran Nath Misra.
 Rai Bahadur Thakur Mashal Singh.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Khan Bahadur Mr. Muhammad Ismail.
 Maulvi Abdul Hakim.

Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Mr. Ashiq Hussain Mirza.
 Rai Bahadur Lala Behari Lal.
 Rai Bahadur Lala Mathura Prasad Mehrotra.
 Raja Shambhu Dayal.
 Raja Jagannath Baksh Singh.
 Mr. E. M. Souter.
 Mr. Tracey Gavin Jones.
 Dr. Ganesh Prasad.

Noes.

Chandhri Jaawant Singh.
 Rai Sahib Chaudhri Sheoraj Singh.

Thakur Rajkumar Singh.
 Rao Sahib Abdul Hameed Khan.

Khan Bahadur Hafiz Hidayat Husain.

Question that clauses 10, 11, 12 and 13 stand part of the Bill, put and agreed to.

CLAUSE 14.

Ex-proprietary tenants.

14. (1) Every proprietor whose proprietary rights in a mahal or in any portion thereof, whether in any share therein, or in any specific area thereof, are transferred either by *foreclosure* or sale in execution of a decree or order of a civil or revenue court, or by voluntary alienation otherwise than (a) by gift or (b) by exchange between co-sharers in the mahal, shall become a tenant with a right of occupancy in his *sir*, and in the land which he has cultivated continuously for ten years at the date of the transfer, and shall be entitled to hold the same at a rent which shall, subject to the provisions of section 49, be two annas in the rupee less than the rate prescribed for occupancy tenants in section 59.

(2) If a part only of the share of a proprietor in a mahal or in any portion thereof is so transferred, such proprietor shall become a tenant with a right of occupancy in so much of his *sir* and of the land which he has cultivated continuously for ten years at the date of the transfer as appertains or corresponds to such part of his share.

(3) Where there are two or more co-sharers in *sir* and one of them becomes an ex-proprietary tenant in it under this section, his previous share in it shall be divided off by the officer empowered to fix the rent of the holding under section 36 of the United Provinces Land Revenue Act, 1901, and his interest as ex-proprietary tenant shall be limited to such share.

(4) Every such tenant and every tenant who is at the commencement of this Act an ex-proprietary tenant under the provisions of the Agra Tenancy Act, 1901, or under any other enactment for the time being in force, shall be called an ex-proprietary tenant, and save as otherwise expressly provided shall have all the rights and be subject to all the liabilities conferred and imposed upon occupancy tenants by this Act.

(5) A mortgage shall be deemed to be a transfer within the meaning of this section when it has the effect of transferring proprietary possession of the mortgaged property from the mortgagor, but not otherwise.

In the former case the right conferred by this section shall come into existence from the date on which possession is transferred.

(6) Nothing in this section shall confer a right of occupancy in any land transferred for any public or private purpose inconsistent with the existence of a right of cultivation therein.

(7) For the purposes of this section permanent tenure-holders shall be considered to have proprietary rights.

(8) For the purposes of sub-section (1) the use of land as *grove-land* shall not be deemed cultivation.

Hon'ble Sir Sam O'Donnell: I rise to move that in line 3 after the word "or" be added the word "is or becomes an ex-proprietary tenant".

This is simply a minor amendment designed to remedy the present wording which is faulty. Ex-proprietary rights can arise under section 126 of the Land Revenue Act, when in a partition the *sir* of a co-sharer is given to another co-sharer.

This is merely a minor amendment.

Question, that the words "is becomes an ex-proprietary tenant" be inserted, put and agreed to.

Question, that clause 14, as amended, to stand part of the Bill, put and agreed to.

CLAUSE 15.

15. (1) Except as provided in sub-sections (2), (3) and (4), no sale of *sir* or agreement, relinquishment or other transaction having the effect of a surrender or relinquishment of ex-proprietary rights, executed or carried out within six months immediately preceding or succeeding a transfer of proprietary rights, shall affect or detract from the rights created by section 14.

(2) Where a proprietor or permanent tenure-holder who under the provisions of section 14 has become or would become on a transfer a tenant with a right of occupancy in his *sir* or in the land which he has cultivated continuously for ten years at the date of the transfer, desires, within six months immediately preceding or succeeding such a transfer, to enter into a transaction having the effect of a surrender or relinquishment of ex-proprietary rights, he shall apply to the assistant collector in charge of the sub-division, and, if such assistant collector is satisfied that the applicant does not wholly or mainly depend on agriculture for his livelihood, or that the land transferred is self-acquired or has been acquired within the twenty years last preceding, he shall sanction such application.

(3) If the assistant collector in charge of the sub-division is not so satisfied, he shall inquire whether there are other reasonable grounds for sanctioning the transaction, and if he finds that such grounds exist, he may sanction the application.

(4) An appeal shall lie against an order rejecting an application under sub-sections (2) and (3) to the collector.

(5) Where the court sanctions an application under the provisions of sub-sections (2), (3) or (4), the applicant shall not become or shall cease to be an ex-proprietary tenant, as the case may be, in the *sir* or other land in respect of which the application is sanctioned, and the

order sanctioning the application shall not be questioned in any civil court.

Notwithstanding anything in this sanction, where the property transferred by means of a mortgage of the kind specified in sub-section (5) of section 14 consists wholly of a specific area of sir, the mortgagor may by simultaneous agreement in writing waive his ex-proprietary rights, and in that case the mortgaged land shall, if the mortgagor regains within twelve years of the date of the transfer possession thereof on redemption of the mortgage, resume the character of sir. In such land statutory rights shall not accrue for twelve years from the date of the transfer.

Rai Bahadur Thakur Hanuman Singh : I beg to move that in lines 11, 12 and 13 omit the words "or that . . . last preceding" and in line 14 substitute "may" for "shall."

Sir, this clause is framed in such a way as to permit a proprietor to transfer his sir rights also to the transferee, but such a provision did not exist in the Act of 1901. After the proprietary right of the landlord is transferred he will have no means of livelihood but his ex-proprietary holding, and sometimes at the times of transfer the proprietors are either induced or forced by the transferee to give up their rights of ex-proprietary tenant in their sir land, which afterwards is the cause of protracted litigation much more ruinous to the transferor than the transfer of his proprietary land and thus the transferor is reduced to poverty. For these reasons, Sir, I am of opinion that the power of transferring his sir land to the vendee should not be given to the transferor, so that he may have, after the transfer, some means of livelihood.

Babu Sita Ram : I beg to oppose the motion of my honourable friend from Ballia. The reason is that this provision is made in the interests of the landlords themselves, and sufficient protection has been provided for any act of indiscretion. If a landlord desires to relinquish or surrender his ex-proprietary rights and the court sees fit that in the circumstances of that particular landlord he should be allowed to do so, there is no harm. There is sufficient protection, and this amendment does not seem to be necessary.

Hon'ble Sir Sam O'Donnell : I, too, oppose this amendment. The Bill provides that the relinquishment of ex-proprietary rights should not be permitted within six months of the transfer of the proprietary rights except with the permission of the court. There are good reasons, to which the honourable mover has referred, for imposing that restriction. The Bill then goes on to say that the court must give permission if the man who is relinquishing the right does not wholly or mainly depend on agriculture for his livelihood or that the land transferred is self-acquired or has been acquired within the last 20 years. It may give permission even in those two cases if there are reasonable grounds. Under the amendment it would never be incumbent on the court to allow relinquishment in cases of that kind. I cannot see how it is reasonable to impose a definite prohibition if the land is self required or acquired within the last 20 years and if the man wishes to relinquish it. It seems to me unnecessary to remove the provision which would allow the courts to give sanction in such cases. I think we have sufficiently protected the interests of the proprietors in the Bill as it stands.

Amendment, by leave, withdrawn.

Rai Bahadur Thakur Hanuman Singh : I move that this sub-clause (3) be omitted. Sufficient provision has been made under sub-clause (2) to permit a transfer of ex-proprietary rights, but there appears to be no reason for the officers before whom the case may be pending to inquire and find other reasonable grounds to deprive the transferer of the ex-proprietary rights in his *sir* land. If this sub-clause is permitted to become a part of law it will work hardly on the transferor.

Hon'ble Sir Sam O'Donnell : It seems to me that this sub-clause is entirely reasonable. All that the sub-clause says is that if the assistant collector in charge of the sub-division is not satisfied he shall inquire whether there are other reasonable grounds for sanctioning the transfer. If he finds that such grounds exist, he may sanction. That is all it says. Why should not assistant collector inquire whether there are other reasonable grounds? And if there are other reasonable grounds why should he not sanction the transfer?

Amendment, by leave, withdrawn.

Question, that clause 15 stand part of the Bill, put and agreed to.

CLAUSE 16.

16. Every tenant, who at the commencement of this Act has acquired a right of occupancy under the Agra Tenancy Act, 1901, or under any previous Act, and every person on whom a right of occupancy is conferred in accordance with the provisions of section 17 of this Act, shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities conferred and imposed on occupancy tenants by this Act.

Pandit Govind Ballabh Pant : I have an amendment which is tabled as amendment No. 96. I want to introduce a new clause 16(a). I do not know if this is the place for moving this.

Hon'ble the President : Before we come to that there is an amendment to clause 16 proposed by Rai Bahadur Thakur Hanuman Singh.

Rai Bahadur Thakur Hanuman Singh : I rise to move that the following paragraph be inserted between the second and the third paragraph: "Every tenant who has been admitted by the landlord to the tenancy of any holding on payment of valuable consideration before the passing of this Act on the express condition that he would not be ejected from the holding as long as he would continue to fulfil the liabilities imposed on an occupancy tenant under the Agra Tenancy Act, 1901."

Hon'ble the President : Where will the honourable member fit it in?

Rai Bahadur Thakur Hanuman Singh : Between the second and the third paragraph.

Hon'ble the President : I do not think it would be grammatical to put it between the second and third paragraph. Will the honourable member say after the second paragraph "and every person who has been permitted," etc.

Rai Bahadur Thakur Hanuman Singh: Thank you, Sir, I move it in this form. In certain districts the landlords on receiving valuable consideration from the tenants have entered into an agreement with the tenants that they would not be ejected as long as they will continue to pay their rents and would not contravene any provisions of the rent law existing for the time being. Such tenants should also be classed as occupancy tenants after this Bill becomes Law.

Hon'ble Sir Sam O'Donnell: One thing seems clear, namely, that this amendment is worded in a very obscure manner. The courts would find it very difficult to interpret the expression "fulfils the liabilities imposed on an occupancy tenant." If any provision of the kind which the honourable mover desires is to be inserted, it ought to be drafted on lines which would be more clearly intelligible.

But quite apart from that, Sir, it seems to me that the amendment is open to objections on other grounds. Under it a perpetual leaseholder is to become an occupancy tenant. Now, whether or not a perpetual leaseholder should become an occupancy tenant ought, it seems to me, to depend on the terms of the lease. The terms of the lease may or may not include the heirs of the tenant. If they do include his heirs, then he is practically in the same position as an occupancy tenant. But it is quite possible that the terms of the lease may not include his heirs, and if such is the case, there is no reason why, in contravention of the lease, he should be entitled to pass on the land to his heirs. If there is any doubt as to his position, he can always bring a suit for declaration of title. It may be desirable that all tenants should become occupancy tenants, but there is no reason why, an exception should be made in favour of a perpetual leaseholder. It seems to me therefore that the proposal of the honourable mover is based on no principle.

Rai Bahadur Thakur Hanuman Singh: In the district of Ballia a large number of leases have been granted to tenants who have been given rights to possess the land themselves and have been authorized under those leases to continue so long as they do not contravene any provisions of the rent law for the time being in force. Such tenants are now classed in the patwaris papers as non-occupancy tenants. It will be very hard for them if they will not be considered to be occupancy tenants. They have spent thousands and thousands of rupees in acquiring that land, and if in spite of that they will continue to be classed as non-occupancy tenants their hardship will be immense. Of course, according to the agreement, these holdings can be inherited by their descendants. The amendment which has been drafted by me may be defective and I am prepared to accept any correction made by the Government. These are tenants who have spent lakhs of rupees on these holdings and if in spite of that their rights of occupancy tenancy will not be recognized by the new Act their position will be simply unenviable.

Hon'ble Sir Sam O'Donnell: I think the honourable member has missed the point. He says that the interests of those who have spent lakhs of rupees should not be sacrificed. But how are they sacrificed? They have and they will continue to have all the rights under their leases. What the honourable member is proposing is something quite different. He is proposing to give them a right which they do not have under the lease. As I have said there may be good grounds for giving everybody occupancy rights, but there can be no

ground for making a special exception in favour of a particular class of persons who happen to hold long leases.

Question put, that the above paragraph be inserted.

The House divided. Ayes, 24; Noes, 55.

Babu Sangam Lal.
Babu Mohan Lal Saksona.
Babu Damodar Das.
Babu Bhagwati Sabai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.

Thakur Har Prasad Singh.
Thakur Keshava Chandra Singh Chaudhri
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Faliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhyaya.
Raj Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Dr. Jaikaran Nath Misra.
Babu Sita Ram.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad E'jaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Babu Khem Chand.
Lala Kishan Lal.
Babu Jai Narayan Chaudhri.
Chaudhri Jaswant Singh.
Raj Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh.

Raj Bahadur Babu Ram Nath Bhargava.
Raj Amba Prasad Sahib.
Raja Suryopal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Raj Sahib Babu Dip Narayan Roy.
Raja Indrajit Pratap Bahadur Sahi.
Raj Bahadur Thakur Mashai Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Raj Bahadur Lala Mathura Prasad Mehrotra.
Mr. E. M. Souter.
Mr. Tracy Gavin Jones.
Dr. Ganesh Prasad.

Babu Sangam Lal : I move that after the words "of this Act" the words "and who is at or after the commencement of this Act a tenant of Government estate or nazul land" be added. I do not think that this amendment requires many words from me in its support. We are all agreed that occupancy tenure offers a greater fixity of tenure than statutory tenancy. The policy of the Government during the last 75 years has been to facilitate the growth of occupancy rights in these provinces, and we would have liked it very much if they had conferred these rights on all tenants. But as a matter of practical politics they have not thought it fit to do so out of regard for the feelings of the zamindars. So, as has been said, they have advanced only half way on

[Babu Sangam Lal.]

the ground that the zamindars have certain rights which must be recognized. But there is absolutely no reason why the Government should not confer occupancy rights on their own tenants, because the State should not be both the zamindar and the Government. I would have very much liked if they had conferred proprietary rights on their tenants and had taken revenue only from them. It is but just and proper that this should have been done. I would have moved an amendment to this effect but I think an amendment of that character would not be out of the scope of this Bill. I have therefore moved that occupancy rights must be conferred at least on tenants in Government estate or of nazul land. Here they have to pay no regard to the susceptibilities or to the interest of any section of this House. I think Government should begin charity at home before asking others to part with their rights.

Mr. Mukandi Lal: I have to make a slight amendment to the amendment moved by my friend Babu Sangam Lal. I, therefore, move that "estates" be substituted for "estate", the reason being that there is not only one Government estate but there are many. The amendment is for the word "estate" the word "estates" be substituted. You are aware, Sir, that in season and out of season we have brought it to the notice of the Government that while they are asking the landlords to be more generous and to do more for the tenants they are not doing more for their own tenants. As has been suggested by my friend Mr. Sangam Lal, the Government should come forward to bestow proprietary rights on their own tenants, but if they are not going so far they may at least take up the same position as regards their tenants as they would like the zamindars to take up. So, if it is the intention of the Government to liberalize the Tenancy Act, I hope the Government will generously accept the amendment proposed by my friend Mr. Sangam Lal, as amended by my amendment.

Question, that the word "estate" in the original amendment be struck out and the word "estates" be inserted there put and agreed to.

Hon'ble Sir Sam O'Donnell: The Government has estates in Mirzapur, in the Tarai and Bhabar and in the Ghazipur, and Allahabad districts. There are also a few very small scattered estates in other districts than Allahabad and Ghazipur, which we are getting rid of. Now this Bill does not apply to the southern portion of the Mirzapur district, where our estates lie, nor does it apply to the Tarai and Bhabar. As a matter of fact, however, in the southern portion of Mirzapur the tenants are practically occupancy tenants. Conditions there are very exceptional. The inhabitants are very primitive, the tenants hold under special terms and those terms in all essentials give them equivalent rights to those of the occupancy tenants.

As regards the Tarai and Bhabar we have just drafted rules which differ in points of detail, but will give the tenants in the Tarai and Bhabar in all essential points, the full privileges of occupancy tenants. As regards the Allahabad and Ghazipur estates and those in the other districts I have no objection to this proposal. But I do object as regards the nazul lands. Nazul lands are intra-municipal lands, which may be required at any time for public purposes. I think the Council

will agree with me that this amendment should not apply to nazul land. We are quite ready to accept it as regards the estates in the plains outside Mirzapur, to which the Act does not apply, and outside the Tarai and Bhabar to which also the Act does not apply.

Mr. Burn has reminded me that we might possibly have to consider the question of Bundelkhand in which we hold a number of mahals, which after recovering the debts paid by us we shall return to the proprietors. It would not matter to us if occupancy rights were given, but it might affect the proprietors. We might have to make an exception in the case of Bundelkhand, but as regards the other estates in the plains I have no objection to the proposal.

Hon'ble the President: Does the Hon'ble the Finance Member propose to move an amendment to delete the words "or nazul land" and insert the words "except in Bundelkhand."

Hon'ble Sir Sam O'Donnell: I would move an amendment to delete the words "or nazul land" and after the words "tenant of Government estates" insert "except in Bundelkhand." I do not think that we have any estates of any consequence whatever in Bundelkhand, but we do hold a number of mahals belonging to the proprietors and I think we might be accused of sacrificing their interests if we accepted the amendment as regards them.

Pandit Govind Ballabh Pant: I want to make an inquiry from the Hon'ble the Finance Member. When we were discussing the tenure in Tarai and Bhabar he was pleased to say that he would reconsider the question of transferability, whereas he has considered that question, but has not arrived at any conclusion.

Hon'ble Sir Sam O'Donnell: We do not propose to confer on the tenants in the Tarai and Bhabar estates any right which is not enjoyed by occupancy tenants. The Bill does not apply to these estates, but we are drawing up certain rules for Tarai and Bhabar tenants. Perhaps the honourable member would like to see them and as I have said before I am quite ready to discuss them with him before they are given effect to. We wish to treat the tenants in Tarai and Bhabar in the same way as occupancy tenants.

Thakur Har Prasad Singh: I rise to oppose the amendment moved by the Hon'ble the Finance Member relating to Bundelkhand.

Khan Bahadur Mr. Masud-uz-Zaman: He has not moved his amendment.

Hon'ble the President: Order, order, the Hon'ble the Finance Member has.

Thakur Har Prasad Singh: In Bundelkhand also occupancy rights should be given to the tenants. The Government is giving the lands to the old proprietors, but that is not advisable. The lands should be given to the tenants in whose possession they are at this time. So under the circumstances I would request the Government that they should give occupancy rights to the tenants so far as the Government estates in Bundelkhand are concerned.

Hon'ble the President: When an honourable member is in possession of the House it is irregular for any other honourable member to stand up and interrupt him unless it is a point of order or a matter of personal explanation.

Khan Bahadur Mr. Masud-uz-Zaman : I am sorry, Sir, that I interrupted him, but I really thought that the amendment of the Hon'ble the Finance Member was not actually moved and that he had mentioned it in his speech only. That is why I interfered. As regards the question of Bundelkhand estates, I think that the mahals in these estates which came into the possession of the Government were really acquired by the Government at the time of distress of famine or at the time when Bundelkhand Encumbered Estates Act was being enforced. In this connexion I say, Sir, that the land came into the possession of the Government owing to the poverty of those landholders who could not even pay their dues and malguzari. I think it is generally recognized by the Government that as far as possible if land is taken from any proprietor and it is no longer in use of the Government it is returned to those very poor people from whom it was acquired. Taking this criterion in view I think it will be extremely unfair if the land which was acquired at the time of distress or which came into the possession of the Government in any other way and if it is going to be returned to those proprietors it may be returned to them after making it less profitable than it is now. The result of the passing of this Act will be that zamindars will frequently sell their occupancy rights at the time when they require money and that will be a source of consolation to those people to whom this land will be returned. I, therefore, think that it is only fair that the land should be returned to them with as few occupancy rights created in the land as possible. For these reasons I support the amendment moved by the Hon'ble the Finance Member.

Rai Bahadur Thakur Mashal Singh : I congratulate the member for Allahabad and the Hon'ble the Finance Member for moving their amendments. By accepting the amendment of my friend Babu Sangam Lal with a slight modification the Government has shown that their attitude is reasonable. It is not the big zamindars who oppress the tenants by exacting nazranas or rack-renting the tenants. In the same way Government never wants that the ryot should be oppressed, but the zilladars of both the zamindar and the Government oppress them. In the case of the Government the zilladars are collectors.

Hon'ble the President : That is hardly relevant to the point at issue. The honourable member should confine his remarks to the amendment itself. I do not think there is much opposition to it.

Rai Bahadur Thakur Mashal Singh : I am simply expressing my gratitude to the Government for accepting the amendment proposed by Babu Sangam Lal. What I wish to impress on officers of the Government is that by the acceptance of this amendment the Government will be conferring a boon on the tenantry, but it has been found in certain Government estates that the gross rental of a village amounts to Rs. 400 while it has been leased up to Rs. 1,800 to a thekedar. It has been up to this moment on lease for a sum of Rs. 72. So in order to prevent these things in future it will be very good for the tenants as well as for the Government who are already solicitous of their welfare if this amendment is passed.

Thakur Keshava Chandra Singh Chaudhri : I wish to move an amendment to the amendment of the Hon'ble the Finance Member. My amendment is that the words "except in Bundelkhand" should be deleted.

Hon'ble the President: The honourable member can speak in opposition to the amendment of the Hon'ble the Finance Member.

Thakur Keshava Chandra Singh Chaudhri: I oppose the amendment proposed by the Hon'ble the Finance Member. My reason is this. The Hon'ble the Finance Member has said that in Bundelkhand the land would be returned to the original proprietors or to their heirs. The land has been in the possession of the Government for the last fifteen or twenty years and in some villages for thirty or forty years and many tenants have already acquired occupancy rights. Moreover, the heirs of the original proprietors cannot claim the land in question as of right. Khan Bahadur Mr. Masud-uz-Zaman remarked that the land must be returned to the original proprietors or to their heirs (in the condition in which it was when they lost it), for if it was not done, it would be a hardship on them. In the first place they have got no vested interests. That will simply be a boon. Moreover, the land cannot be returned to the heirs of the original proprietors as it was when it was acquired by the Government. I have already said that occupancy rights have accrued. For these reasons I oppose the amendment moved by the Hon'ble the Finance Member.

Pandit Nanak Chand: The Hon'ble the Finance Member has pointed out that the provision of this amendment cannot be extended to the Government estates in Mirzapur and Tarai and Bhabar. We have not so far dealt with the first clause of the Bill which determines the extent of the Bill nor with the first schedule where the Tarai and Bhabar and the Mirzapur Government estates are said to be excluded. The Hon'ble the Finance Member has pointed out that in Mirzapur the tenants have got rights almost similar to those of the occupancy tenants. If they have, I do not see any reason why their position should not be altogether made similar to that of the occupancy tenant. As regards Tarai and Bhabar also he has been pleased to remark that there also the Government has given them more stable rights than those of the occupancy tenant. So when the Government are willing to give occupancy rights, I do not see that there is any serious difficulty in their way. The first schedule and the first clause can be amended if the Hon'ble the Finance Member on behalf of the Government will like to extend this right to the tenants of Government estates in Mirzapur district and in Tarai and Bhabar.

Babu Sangam Lal: I see no reason why the benefit of this amendment should not be extended to nazul land, because as the Bill stands at present the land which has been excepted from the operation of this Bill is mentioned in clause 19 and if this clause is passed as it stands, the benefit of statutory tenancy will arise in nazul land also. So if the Government is agreeable to confer statutory rights in nazul land, I see absolutely no reason why occupancy right should not be conferred there, because if you had excepted from this Bill nazul land, then that would be an argument in favour of the amendment. Also if you refer to the first schedule, you will find that nazul land has not been excepted. Therefore I see no reason why the Hon'ble the Finance Member accepts my amendment in regard to the Government estates and does not accept it in regard to nazul land. He has advanced one reason that nazul land generally lies within municipal limits and perhaps that land may be required for building purposes. Now, Sir, nazul land is either occupied

[Babu Sangam Lal.]

or not occupied. If it is not occupied of course this amendment will not affect it, but if the land is occupied by a tenant, we see no reason why he should not get the benefit of it as he will get such benefit in this Bill. If the Government want to acquire occupancy rights, then they have to pay simply three times the rent and I think any local body which is anxious to acquire land for building purposes can do so very easily. It will not have any difficulty. In fact the local bodies will have to pay much less than the zamindar under section 40. Therefore I do not see any reason why the nazul land should be excepted. With regard to Bundelkhand and the southern portion of Mirzapur I think it would be much better if the amendment of the Hon'ble the Finance Member is postponed till we come to consider the first schedule.

Hon'ble the President: It is anticipating arguments. We shall come to schedule I later and it will be open to honourable members to move amendments bringing the southern portion within the jurisdiction of this Bill. If so included, this amendment, as proposed by the Hon'ble the Finance Member, will, *ipso facto*, apply to Mirzapur.

Babu Sangam Lal: As regards Bundelkhand there is a difference of opinion among the representatives of Bundelkhand. So far as Mr. Masud-uz-Zaman is concerned, he is in favour of the amendment of the Hon'ble the Finance Member. So far as the Swarajist representatives of Bundelkhand are concerned they are opposed to that amendment. Therefore I would request you to put this amendment into three different clauses so that the honourable members may vote on the question of nazul land and others separately.

Hon'ble Sir Sam O'Donnell: As you, Sir, have pointed out, we can discuss this matter when we come to the schedule. As I understand the position, however, the Act could not extend to the Tarai and Bhabar and to Mirzapur unless there is a notification under the Scheduled Districts Act. That, however, is purely a legal point. There are, as a matter of fact, strong reasons for not extending this Bill to this particular tract in which the circumstances are peculiar.

As regards the Bundelkhand estates, these are really held by Government in the capacity of a trustee. That is the reason why we think it undesirable that occupancy rights should be conferred on all the tenants of these estates, though, I dare say, a number of them have in the process of time acquired occupancy rights in Bundelkhand. The difference between occupancy land and non-occupancy land there, moreover, is not so marked as it is in the rest of the province. In Bundelkhand the competition is rather for tenants than for land. Having regard, however, to our position as trustees we do suggest that it is not desirable to extend occupancy rights to all the tenants of mahals which we hold as trustees.

As to nazul land, it is quite true that statutory rights may accrue in such land. I am not sure that it is right that statutory rights should be acquired in such land, but at any rate I do not think we ought to carry the matter further. It must be remembered that this land lies inside the municipalities and may be required at any time for public purposes and if occupancy rights accrue in it, then whenever the land

is required for public purposes we shall have to buy it at a much higher price than we should have to pay to any other tenant. I am sure the Council will agree with me that occupancy rights should not be conferred in nazul land.

Babu Nemi Saran : With your permission I want to put a question with regard to Bundelkhand. I want to know at what price is the Government returning the Bundelkhand villages which they are now in possession of—after settling a suitable price or after realizing only the arrears of revenue which were at that time due from the fore-fathers of those from whom the estates were confiscated for non-payment of revenue ?

Hon'ble the President : Is that a necessary question to elucidate the point under discussion.

Babu Nemi Saran : It is necessary so far that if Government is going to return those lands after realizing the arrears of revenue it means that they are the trustees, but if they are doing so after settling a price for them then they are not trustees.

Hon'ble Sir Sam O'Donnell : May I reply to the point ? We are not asking for any price when we return the land. We have been managing these estates and paying off the debts and as soon as the expenses incurred have been liquidated the estates will be returned to the owners without any charge. We may have to extend the period, however, if occupancy rights are conferred.

Lient. Raja Durga Narayan Singh : May I know if their position is different from that of the Court of Wards.

Hon'ble Sir Sam O'Donnell : If the honourable member will look at the Bill he will see that the Court of Wards can only confer occupancy rights for valuable consideration.

Pandit Nanak Chand : I wish to inquire from the Hon'ble the Finance Member the reasons to which he has alluded, but which he does not give us in detail, which prevent the Government from conferring occupancy rights to the Government estates in Mirzapur and the Tarai and Bhabar ?

Hon'ble the President : That question does not arise. It is an argument. Reasons have been given in the course of the reply.

Thakur Keshava Chandra Singh Chaudhri : Are these Government estates or not ?

Hon'ble Sir Sam O'Donnell : Whether the mahals we are managing in Bundelkhand are Government estates or not is a legal question. I cannot say without advice whether technically we are the owners or not. But the practical position is that we are simply endeavouring to pay off the debts and hand back the estates to the owners. Therefore I think it is not desirable to apply this amendment to Bundelkhand.

Question put that in the amendment proposed the words "or nazul land" be deleted.

The House divided : Ayes, 50 ; Noes, 34

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. E. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Bahadur Brij Narayan Rai.
Mr. H. David.
Babu Khem Chand.
Lala Kishan Lal.
Rai Jagdish Prasad Sahib.
Ohaudhri Jaswant Singh.

Lala Babu Lal.
Rai Bahadur Babu Ram Nath Bhargava.
Raja Suryopal Singh.
Rao Sahib Kunwar Sardar Singh.
Raja Narayan Pratap Singh.
Raja Sri Krishna Dutt Dube.
Rai Sabib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
Bhaya Hanumat Prasad Singh.
Raja Shankar Sahai.
Khan Bahadur Mr. Muhammad Aslam
Saifi.
Khan Bahadur Chaudhri Amir Hasan
Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman
Khan.
Khan Bahadur Hafiz Hidayat Hussin.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim
Dr. Shafe'at Ahmad Khan.
Khan Bahadur Maulvi Muhammad Fazl-
ur-Rahman Khan.
Raja Shambhu Dayal.
Mr. Tracey Gavin Jones.
Dr. Ganesh Prasad.

Noes.

Babu Sangam Lal.
Babu Mohan Lal Saksona.
Babu Damodar Das.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar
Thakur Manjit Singh Rathor.
Rai Sahib Chaudhri Sheoraj Singh.
Pandit Nanak Chand
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Pandit Kharagjit Misra.
Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Thakur Har Prasad Singh.

Thakur Keshav Chandra Singh Chaudhri.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhya.
Pandit Govind Lalabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Dr. Jaikaran Nath Misra.
Rai Bahadur Thakur Marshal Singh.
Babu Sita Ram.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Saiyid Muhammad Ashiq
Husain.
Khan Bahadur Hakim Mahbub Ali Khan.
Shaikh Abdus Samad Ansari.

Question put, that in the amendment proposed after the words " Government estates " the words " except in Bundelkhand " be added.

The House divided : Ayes, 51 ; Noes, 31.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Villard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Bahadur Brij Narayan Rai.
Mr. H. David.
Babu Khem Chand.
Lala Kishan Lal.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.

Lala Babu Lal.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryapal Singh.
Lala Dhakan Lal.
Raja Narayan Pratap Singh.
Raja Indrajit Pratap Bahadur Sahi.
Raja Shankar Sahai.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Muhammad Hazlur-Rahman Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Shaikh Abdus Samad Ansari.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Shambhu Dayal.
Mr. Tracey Gavin Jones.

Noes.

Babu Sangam Lal.
Babu Mohan Lal Saketna.
Babu Damodar Das.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sabai Bedar.
Thakur Manjit Singh Rathor.
Rai Sahib Chaudhri Sheoraj Singh.
Pandit Nanak Chand.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.

Thakur Har Prasad Singh.
Thakur Keshava Chandra Singh Chaudhri.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Faliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhyaya.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Dr. Jaikaran Nath Misra.
Rai Bahadur Thakur Mashal Singh.
Babu Sita Ram.
Rao Sahib Abdul Hameed Khan.
Dr. Ganesha Prasad.

Question that the words " and who is at or after the commencement of this Act a tenant of Government estates except in Bundelkhand " be inserted, put and agreed to.

Pandit Govind Ballabh Pant: I will move my amendment after making a very small alteration in order to bring it within clause 16. I propose that clause 16 be numbered as 16(1) and my amendment as 16(2). I move that the following be added as a new sub-clause (2) to the present clause 16 of the Bill:—" Every tenant who has cultivated his holding as a statutory tenant, without sub-letting any portion of it continuously for twelve years, after the commencement of this Act, shall acquire all the rights and be subject to all the liabilities conferred and imposed on occupancy tenants by this Act."

[Pandit Govind Ballabh Pant.]

Well, Sir, a sort of flutter has followed from my amendment. I knew that it would cost me some effort to convince the honourable members of the reasonableness, the necessity and the wholesome character of this amendment, and I hope that by the time I sit down at least I will have dispelled the misgivings of those who are still doubtful about it. Whether I will do so or not will depend on the reasonable attitude of the members of this House and on their listening to me with an open mind. I hope they possess both. Well, Sir, as to the merits of the amendment I may inform the honourable members of this House that about five or six paragraphs of our minute of dissent dealt with it, and from that the honourable members can very well understand the strong feeling that we have on the subject. I have absolutely no doubt that the Bill as it is is entirely lacking in vitality and vigour because of the absence of a provision of this character. The Bill was the outcome of the labours of a committee that was formed by the Government with a view to find out a lasting solution of the agrarian problem. Not only was it to be lasting, but it was also to be satisfactory. I put it to the honourable members of this House whether they are satisfied that the present Bill does furnish a lasting and satisfactory solution of the agrarian problem. Are they satisfied that it is anything but a makeshift arrangement, which is being provided to meet only the exigencies of the present situation, and that in framing it its framers have been inspired only by the requirements which thrust themselves upon those who are actuated by nothing but the principle of expediency? I have no doubt that the Bill as it is, though it may for the time being serve as a palliative to meet what has been said in the original resolution issued on the subject by the Government to be the keener realization of grievances and a growing determination to press for their redress by the cultivators in the province of Agra, cannot but lead to further legislation after a short time. I do not see any reason why the time of the public should be wasted again and again on a question which raises bitter controversy or why such a measure should be dealt with in a tampering spirit to be brought forward again and again to embitter controversy and create splits between us. Again, I think it is in the interest of Government too that they deal with the question in a generous manner with a view to find out an ultimate and final solution of it. It is because I feel that it is absolutely necessary that this Bill should provide some solution for a reasonable time to come that I am proposing this amendment. Sir, this is a very great defect in this Bill that it gives the go-by to the policy which has been in force in this province for at least 125 years. This Bill is making an abrupt break from the policy which has been recognized, approved, confirmed and developed by means of legislation during the last 70 years in this province. From time to time efforts have been made to give further strength to the principle of occupancy tenure in these provinces. By this Bill an end is being put to that for ever. We have to see whether we can satisfy the tenant by means of any provision which will give him only the privilege of continuing in possession of the holding for his life time, provided he goes on paying rent at a very high rate; whether a provision like that can solve the agrarian problem. The arguments that were advanced by Hafez Hidayat Husain Sahib and Rao Abdul Hameed Khan Sahib in the course of

their discourses on a prior clause of this Bill can very well be brought to mind by honourable members of this House in this connexion. They were very right when they said that among us a tenant cannot appreciate anything that does not continue the advantage of that thing beyond his lifetime to his children. We know that in Indian homes one's own wife, if she fails to bring forth a child, is condemned by her own husband. So in the places where we live, where sanctity is attached to the principle of heredity, a principle that will put an end to the heritable character of the land tenure in this province altogether and will terminate it after the lifetime of the tenant concerned is nothing if not altogether vicious. I hold that it is absolutely necessary that this amendment should be made. As must be known to honourable members of this House, there is no provision for the acquisition of occupancy rights in this Bill. I am not taking into account the provision with which we have just dealt with, which enables a landlord to confer occupancy rights. I am concerned with the acquisition of occupancy rights, not with the conferment of such rights. So far as the conferment of rights is concerned, it is open to any person to confer any rights on any person so long as there is no law prohibiting such conferment. But the acquisition of rights is an entirely different thing. Sir, I do not know if our honourable friend, Mr. Gavin Jones, is here. I want to ask him if there can be any agricultural development in the province, if he can think of people putting their money, putting their labour and investing what they possess in their holdings when they know full well that whatever they invest will come to an end after their death. And after all what does a man live for? Does he live for himself or for those whom he procreates? If it is for those who are to follow him that a man lives, works and labours—that is after all the weakness of us Indians even in this materialistic age—then I say that this provision cannot serve a beneficial purpose, it will be detrimental to agricultural development and will be detrimental to the growth of genuine interest in the land on the part of the tenants and it will lead to such a precarious tenure as will be harmful in more ways than one. I do admit that the principle of statutory life-tenancy is useful to the extent that it secures the tenant in the enjoyment of his holding for his lifetime—to that extent it is to his benefit. I request you to look at the thing from the larger standpoint. I am asking if it can solve the problem. I know that the scheme of this Bill has been framed on the basis of the Oudh Rent Act of 1921 and that is exactly the reason why I think that this clause should be added to the present clause 16. In Oudh we had practically no occupancy tenure prior to that year. The number of occupancy tenants did not exceed a few thousands. The proportion did not go beyond two per cent. In Agra the state of things is entirely different. Here we have a large number of occupancy tenants. The growth from year to year of about half a per cent. of occupancy area shows that great importance has been attached to it by those who have acquired the privileges. Then we also know that in the province of Agra these rights have not been prohibited by anything in the form of the Oudh compromise. I say and I claim that it is the inherent right of the tenant in the province of Agra that he should acquire occupancy rights in these provinces by virtue of prescriptive usage. It is his inherent right by virtue of the Statutes which have been in force for the last seventy years and it is in conformity with the sacred principles which have been observed for such a considerably long time. By limiting the tenants' rights to his lifetime you

[Pandit Govind Ballabh Pant.]

are doing an injustice to the vast class of tenantry concerned. You are doing an injury to the larger interests of the landlords concerned, because I do believe that it is in the interests of landlords that the tenants should feel that their holdings are their own. It is in the interests of landlords that the tenants should feel that their children and their children's children will ever be associated with the children and children's children of the landlords. But when their tenure is to come to an end with their life-time they must feel the weakness of their position. They will feel that their landlords have only an ephemeral and temporary connexion with them. It is because I desire that there should be harmony between the landlords and the tenants that I advocate this course. What I am proposing is not after all an unknown innovation. As may be known to the honourable members of this House, in the Central Provinces occupancy rights were conferred on all non-occupancy tenants. There was nothing in the form of statutory tenure. I wish to invite the attention of the House to another point. Here under this Bill the zamindars are deriving many more advantages than the zamindars in Oudh got from the Bill of 1921. So if the provisions of this Bill are supplemented in any way it is not unfair or unjust to the zamindars. If this Bill had taken this shape from the outset, there would not have been any serious objection on the part of anybody. Sir, the principle of occupancy tenure is desirable also because we want that the tenant should go on adding to the productivity of the soil. We want that the tenant should work for his field knowing full well that his son has to be a tenant. He should not be driven from his holding. If he has to do it, he has only to lay up every shell for something else. If his son has to cast about for his living after his death, how can he feel inclined to improve his holding? So, Sir, from whichever aspect the question may be looked at, it is necessary that a provision of this character should find a place in this Bill. It has been said by some of our friends here that they have been returned by the votes of one class or another. We have also been told that we should remember that we have been returned by the votes of the zamindars and the tenants. To us the occasion is much more solemn than that. We think that this is hardly an occasion for tactics or manoeuvring when such large issues are at stake. Millions of people are looking up to this Council today as to what we do. They may not be as wide awake and vocal as others who are more familiar with the activities of parliaments are. But we know what we do today will reflect upon their well-being, will bear upon their welfare for at least some time to come. All of us may be wiped out from the floor of this Council. That is after all an altogether inconsequential consequence. What does it matter to us? The principle before us should be whether in the interests of the country, whether in the larger interests of the people whom we happen to be representing here today is it or is it not necessary that an amendment of this sort should be made in this Bill? If the majority of the people tell us that it is reasonable that such an amendment should not be made, it may be thrown out. But I appeal to the honourable members of this House, on whichever side of this chamber they may be sitting, not to be influenced by any other considerations in disposing of the amendment which I have just moved.

Hon'ble Sir Sam. O'Donnell: This amendment proposes that, subject to one condition occupancy, rights should be conferred on all statutory tenants who have cultivated their land for twelve years. The condition is that the land must not have been sub-let for any portion of the twelve years. I confess that I do not understand why this condition should be inserted. I agree, of course, that there must be restrictions on sub-letting, and I gather from the honourable member's minute of dissent that the restrictions which I should regard as reasonable are greater than he favours. On the other hand it seems to me that to disallow any sub-letting during the whole period of twelve years is going farther than is necessary or desirable. However, that is a minor matter. The essence of the proposal is that all statutory tenants who have held for twelve years are to become occupancy tenants. In short, the proposal is a sort of half-way house towards the conferment of occupancy rights upon all tenants.

Now, Sir, I have never claimed that this Bill is an ideal and a final solution. I said expressly, when moving that the Bill be referred to a select committee, that there could be no final solution; that we might be quite certain that fresh problems would arise later on with which our successors would have to deal. But I cannot accept the criticisms of the honourable mover on the solution proposed in this Bill. He complains that we have abrogated the twelve-year rule. Now, Sir, I am far from denying any merits to that rule. Undoubtedly under its operation a large proportion of the tenant area has acquired protection. It is also true that the area has tended to increase. The increase is not large. If we exclude Bundelkhand, in which conditions are exceptional, I think the increase is not more than nine per cent in over twenty years, and that increase has been attained at a great cost. The twelve-year rule was in its origin a device to give legislative sanction to certain prescriptive rights enjoyed by tenants of long-standing. These prescriptive rights were of course not well defined. There was no precise period which was everywhere recognized as conferring them. When the question of legislation arose, a definite period had to be fixed and eventually the period of twelve years was selected. But, Sir, that rule from the very beginning came under considered and hostile criticism. As far back as 1861 Mr. Muir, who was afterwards Lieutenant-Governor of these provinces, in a statement of the objects and reasons of a draft Bill prepared by him, observed as follows:—"It bears hardly on the landlord, tends to excite antagonism between the landlord and the tenant, and makes it the landlord's object to oust his tenant before a twelve-years' title can accrue." I maintain that subsequent experience has fully justified that criticism. The twelve-year rule has been the most fruitful source of litigation between the landlord and the tenant, and for that reason we came to the conclusion that this particular provision of the law should be abandoned. The honourable member said that the provision in the Bill under which occupancy rights can be conferred is entirely useless. He said that nobody is going to confer occupancy rights. Under the present law it depends upon the landlord whether a tenant gets occupancy rights or not. The landlord can always defeat the accrual of occupancy rights by ejecting the tenant in the eleventh year. And although it is the case that occupancy rights have been acquired to a certain extent by mistake or fraud, yet I believe that in the main occupancy rights have been acquired in return for a definite

[Hon'ble Sir Sam O'Donnell.]

consideration, i.e., either for the payment of a higher rent or for the payment of a premium. Therefore, I see no reason to believe that occupancy rights will not be conferred. I believe that there are many landlords who will be quite prepared to give occupancy rights in return for a consideration. If, however, rights are not conferred in this way, I believe it will be simply because many tenants, having secured statutory rights, will not be prepared to pay for the acquisition of occupancy rights. I see no reason therefore to suppose that the occupancy area will decrease. If it decreases and if the statutory area increases correspondingly, I think that will be simply because the tenants who have acquired statutory rights for the time being are not anxious to acquire occupancy rights in return for a payment.

The honourable mover has referred to the case of Oudh. It is quite true that in Oudh there are very few occupancy tenants. It is also true that in Agra there are a large number of occupancy tenants. But the fact that a large proportion of the area in Agra is already subject to occupancy rights hardly appears to be any reason for extending to the non-occupancy tenants in Agra more liberal concessions than have been conceded to the tenants in Oudh. It is also true that the area of *sir* or the area which will become *sir* in Agra under this Bill is greater than the corresponding area in Oudh. Again, the answer is simply this that in Agra the number of small landholders is much larger. About two-thirds of the area in Oudh is held by large landlords. That is the reason why the *sir* area in Agra will be larger than in Oudh.

The honourable mover seems to suppose that we have merely slavishly copied the Oudh Rent Act. That is not so. We have in preparing this Bill endeavoured to go as far as is practicable in the circumstances. As I have said before, we do not claim that ours is an ideal and final solution. I have no desire to conceal my own opinion that probably the time will come when occupancy rights will be conferred on everybody. But it is undesirable and impracticable to legislate in advance of public opinion. In our opinion this Bill goes as far as is reasonable and practicable in the existing circumstances. Further, Sir, I maintain that it does involve a very marked and substantial advance from the point of view of the tenantry. There are 5, 600,000 acres of land held by non-occupancy tenants. There are in addition over a million acres held by tenants under seven-year leases. Then there are the sub-tenants of the statutory tenants, and in addition to that there is a certain proportion of the area which is recorded as having been held for more than twelve years but in respect of which the tenants could not establish their claim as occupancy tenants. If we add all these areas together they amount to over seven million acres or about one-third of the area held by tenants, and over that substantial area the tenants will be protected for long periods. They will enjoy security of tenure for long periods and they will be protected against arbitrary enhancement of rent. I maintain therefore that this Bill, even though it may not be an ideal one does mark a real and substantial advance. For this reason I am unable to support the amendment moved by the honourable mover.

The Deputy President here took the Chair.

Khan Bahadur Mr. Muhammad Aslam Saifi: In his usual eloquent style my Honourable and learned friend Pandit Govind Ballabh Pant

has appealed to the sentiments of the House to come to a final solution with regard to the agrarian question in these provinces. He has proposed occupancy rights for certain tenants with certain qualifications. I could understand his position if he had moved his amendment to give right away occupancy rights to all the tenants who at present are non-occupancy tenants. I am afraid my honourable friend has not looked at this question from a practical point of view. I should like to ask him whether this will be a final solution of the difficulty that is before him. Was the legislation to which he has himself borne evidence and which was passed in 1901 the final solution of this problem? At that time occupancy rights were thrust down the throats of the zamindars. That legislation, if it was anything, was the most vicious legislation, and it has now been proved by the facts which have come to our notice. He says that this Bill is a half-way house. The proposition that he has put before the House is a three-fourths-way house, because, if the statutory rights that are now being conceded to the tenants are not satisfactory, I think the proposition itself is equally unsatisfactory. If he had any experience of the relations between the zamindars and the tenants, I think he would not have come forward with this proposition. He says that the children of the occupancy tenants would like to have the good feeling towards the children of the zamindars; that they have been associated with the zamindars for generations together. My own experience is that, wherever occupancy rights have been acquired under the existing Act, they have been acquired under conditions which have brought about the most unpleasant relations between the zamindars and the tenants. It is seldom that we come across any occupancy tenants and zamindars who are on good terms. Therefore, it is nothing but a mirage to accept the proposition that simply because occupancy rights are conferred, the relations between the zamindars and the tenants will become good or that the problem between the zamindars and the tenants in the rural area will be solved. I see no reason whatever to support this amendment, which is based on nothing else but sentiment.

Babu Nemi Saran : I rise to support the amendment of my honourable leader Pandit Govind Ballabh Pant. I would reply to those points which have been raised by members who have opposed the amendment. The Hon'ble the Finance Member said that it was impossible to have a final solution of the problem. We know that as human beings we are imperfect, but we always try towards the ideal as far as we can. My one question to the Hon'ble the Finance Member is, has he tried, according to his conscience, to move as near the ideal as he could in the circumstances? So far as I can see this Bill is a sort of compromise between the Government point of view and the zamindars' point of view without trying to know what the tenants think and feel on this agrarian problem. Unfortunately there is no member in this Council who represents the tenants' point of view undiluted, while the zamindars' point of view is represented by many honourable members here. As far as this amendment is concerned, I think the honourable mover has tried to come as near the ideal as he possibly could according to the present circumstances. It is high time that the zamindars should take stock of the past and the present and of the circumstances around them. It is very necessary that our politics and future legislation should take into account the conditions which are prevailing in the country, and I would even say outside India. If you look at what happened in Russia and

[Babu Nemi Saran.]

other countries regarding this legislation, you would come to the conclusion that the man who tills the land should be given as much as possible of the fruits of his labour. I think it is only in very few countries, probably only in one or two countries, that this institution of landlords exists. But any way, that is not the point in issue. We must at least move towards coming to some final settlement between the relations of the zamindars and tenants, and we need to revise the law with that end in view. Regarding public opinion, I think if the honourable members of this House would go to the tenants and talk to them they would be able to tell them what they really need, and the first thing which they need is the fixity of tenure unobscured by the will of the zamindar. They say they should have a right to live on and till that land as long as they pay the rent for it to the zamindar. I think if these two questions can be solved in the agrarian problem, namely, the fixity of tenure and fair rent, this legislation as far as the present circumstances are concerned will be ideal. This amendment brings us near this ideal to a reasonable extent. As far as the argument of the Hon'ble the Finance Member goes that we should not go in advance of public opinion, I do not know with what standard the Government measures this public opinion. But I think the public opinion is far more advanced to accept the amendment of my friend Pandit Govind Ballabh Pant. If you go to the tenants who form the greater majority of the population of this province of Agra, you would find that this amendment would be hailed with delight and would be welcomed. If their opinion is not considered to be "public opinion", I am afraid the Government takes into consideration only the public opinion of those persons who represent vested interests. I think the tenants have got as much right to say that they also form a part of the public and to have a voice in the formation of public opinion. Therefore, I put it to the honourable members of this Council that public opinion demands that in order to have a contented peasantry it is very necessary that you should give to them as far as you possibly can fixity of tenure. The amendment moved by my friend does not go so far as to jeopardize the interests of the zamindars. Just as the honourable mover of the amendment has said that in Central Provinces exactly the same step was taken in 1920 and perhaps a wider and bolder one, because occupancy rights were conferred forthwith on those tenants who had only non-occupancy rights. Now, Sir, as far as the amendment goes, it only wants that only those persons, those statutory tenants, should be allowed to acquire occupancy rights who do not sub-let their holdings. It means that those tenants only who are really in need of land, who do not possess more land, and who wish to cultivate for themselves, would be entitled to get these occupancy rights and not those who have got sufficient land and who let their land out to other tenants. One of my friends remarked that if you like to keep good relations between zamindars and tenants, perhaps this amendment is not suitable. I may say that, as far as I know from my own experience and also from the experience of my friends who are zamindars, I can tell them that it is very necessary in the interests of the zamindars and the tenants that the occupancy rights should be conferred on them. I may predict, Sir, that if it is not today that you will concede these rights, it would be tomorrow, and if not the present

incumbent of the office of the Finance Member, at least his successor will have to bring in a law before long conceding these rights. Then why not do so now? It is high time that we should go as far as we can to create a contented peasantry without jeopardizing the position of zamindars. Why not be chivalrous today and give them these rights which do not harm anybody? A majority of zamindars are prepared to give them occupancy rights provided they get sufficient land for their own maintenance and for their own cultivation. And I think there is much more land under their *sir* or which can be so acquired under this Bill than would really be required by the zamindars for their self-cultivation or self-support. Hence this amendment is but reasonable and there can be no trouble to zamindars over this question. Therefore, Sir, I whole-heartedly lend my support to the amendment before the House.

Pandit Nanak Chand: I have tabled a similar amendment, but I would like to support the amendment that has been proposed by my friend Mr. Pant.

Deputy President: You are not moving your own amendment?

Pandit Nanak Chand: No, Sir. I would, to begin with, point out the pernicious effects of the present Bill and its provisions. The result of the provisions of this Bill is bound to be that the occupancy area will go on decreasing every year. Many occupancy holdings will revert to zamindars as ordinary land in cases where the occupancy tenants die heirless; we also know that there is a considerable number of occupancy holdings from which tenants are ejected every year for failure to pay arrears of rent, besides cases of surrender and ejection for other reasons. On the one hand the occupancy area will go on diminishing, on the other hand the present Bill places a ban on the accrual of fresh occupancy holdings. The inevitable result will be that year after year as the occupancy area goes on diminishing, the occupancy holdings which revert to the zamindar will either be taken into his own cultivation or will be given to statutory tenants. To the extent that such area is brought by zamindars under their own cultivation it will be properly cultivated and it is possible that such land will be improved by the landlords; but the landlords can use only a limited area for their own cultivation, the rest of the area will have to be given to the statutory tenants, who will in majority of cases start their tenancy at considerably higher rents and when they are financially bankrupt on account of high premiums which will be exacted in most cases.

Now, Sir, if we compare the advantages of occupancy tenure with the disadvantages of the statutory tenure, it is at once apparent that the statutory tenant can never feel that attachment to his holding which exists in the case of occupancy tenant, a statutory tenant can never feel that keenness to invest every pie that he can afford on improvements as he would feel if he were an occupancy tenant. Thus the substitution of statutory tenure for occupancy tenure will lead to a loss of incentive and interest in agriculture on the part of the tenants. This will naturally lead to deterioration of cultivation in statutory areas as compared with the high level of cultivation which is now maintained in occupancy holdings. Besides this, the tenants have come to regard this prescriptive right as their inherent right, and if the Bill makes a departure from that, it will be regarded, and is regarded already, by

[Pandit Nanak Chand.]

the tenants as a serious departure of policy to their disadvantage. The consequences of this provision remaining in the Bill will be disastrous and they will lead to further embitterment of relations between the landlords and the tenants. The Hon'ble the Finance Member has pointed out that this is not the ideal or final solution, which implies that sooner rather than later we may have to amend the Act that may be passed today. If that contingency is ahead, I appeal to my colleagues of the Zamindar party that they should attempt to come as near the ideal and the final solution as is possible in the circumstances. It has been pointed out by my honourable friend Khan Bahadur Mr. Aslam Saifi that the twelve years' rule has led to straining of relations between the zamindars on the one side and the tenants on the other side. This is due to the fact that while the tenant prized this right to acquire occupancy tenancy, the zamindar on the other hand thought that if the tenant acquired occupancy right, he would not be amenable to the influence of the zamindar, and that, further, he would not be in a position to get as high a rent as he would be able to get if the tenant was a non-occupancy tenant, and the zamindar was allowed to eject to prevent accrual of occupancy right by twelve years' continuous cultivation. The zamindar will not be allowed to eject a life-tenant simply to prevent his completing a period of twelve years, and hence this struggle between the two parties which embittered their relation under the existing Act, will be automatically eliminated and set at rest. Besides the question of influence on the tenants the question of enhancing the rents induced the zamindars to fight perpetually against the accrual of occupancy tenancy. The present Bill proposes that the zamindar should not be able to raise the rents to the extent that he has been free to do up till now; it proposes to put certain restrictions on the enhancement of rents and also minimizes the influence of the zamindars by creating the statutory tenant. Thus the two main considerations or incentives which weighed with the zamindars to prevent accrual of occupancy rights will be very much minimized, if not altogether taken away. It should be clear to the zamindars that it is not to their advantage to withhold these occupancy rights, and if the zamindars today give these occupancy rights with grace out of their own free will and generosity, I am sure the relations will not be as embittered as they have been in the past, and I can predict that they will improve. They will most certainly improve as the tenants will realize that the zamindars have conferred this right on them out of their own free will at a time when they are in a clear and overwhelming majority in this Council.

Raja Shambhu Dayal asked the honourable member to bring his remarks to a close, as it was getting close upon 5.

Pandit Nanak Chand : If the remarks of my friend Raja Shambhu Dayal Sahib are really . . .

Deputy President : The honourable member had better address himself to the question before the House instead of replying to the Raja Sahib.

Pandit Nanak Chand : It has been admitted even by my friend Khan Bahadur Mr. Aslam Saifi that while the leader of the Swaraj

party has said that the amendment that he has proposed means a half-way house if not the final solution, he has admitted that not only it is a half-way house but a three-quarter-way house on the way to the final solution. If it is like that, I do not see any reason why the zamindars should not agree to the conferment of this right in the shape that has been proposed in the amendment.

Now coming to the question of continuous cultivation without sub-letting, I consider that it is only just to enable the zamindars to allow only the genuine tenants declared as occupancy tenants. If this condition of sub-letting were not there, the result would be that every tenant, irrespective of the fact that he is a genuine and real cultivator or otherwise, whether he has been continuously cultivating or has been very frequently sub-letting, will be entitled to acquire this right, and it is for that reason that I consider that this condition is necessary so that the zamindar may have only genuine tenants declared as occupancy tenants. For these reasons I support the amendment of my friend Pandit Govind Ballabh Pant, and once more appeal to my zamindar friends to accept the amendment.

Hon'ble the President here resumed the Chair.

Raja Indrajit Pratap Bahadur Sahi: I had no idea that this amendment will take so much time after all that has come from the Hon'ble the Finance Member. His speech is most convincing in this connexion, and I do not think that there is anything particular for us to argue on the point. No arguments have been advanced for the acceptance of this amendment, but it has been said that there is no provision for further accrual of occupancy rights and that the occupancy rights will diminish gradually, but as the Hon'ble the Finance Member has already said, there is a provision in this Bill and the zamindars have a right to confer the right of occupancy on the tenants. There is no reason why that section would not be utilized properly, and if occupancy rights are conferred by the zamindars out of their own good-will and good feeling it will create much better relations between the zamindars and the tenants than what they will be if this amendment be accepted and added to the Bill. So far, under the existing Tenancy Act, any tenant who cultivates his land continuously for twelve years gets the occupancy right, provided the zamindar does not eject him from his holding. Under the circumstances the zamindars are obliged to eject the tenants as soon as they get to tenth or eleventh year. If a tenant can prove himself satisfactory and faithful to the zamindar he gets that right all right. After the passing of the amendment if a tenant continues to cultivate and lives for twelve years, which I hope he will in most cases do, he gets the right of occupancy and there is no control of the zamindar. Whatever the zamindar may think, he has no control in that connexion except when the tenant dies before the twelve years which I hope no zamindar or in fact no human being would ever wish. If this amendment is accepted by the House it means that in twelve years almost all the statutory tenants will get this right from the zamindars, whether they wish it or not. Nobody will deny that the relations between the zamindars and the tenants should be such as between father and son. If they are not interrupted from outside, I think their relations will be ideal. But when strained feelings are caused, and the zamindars are forced to give up their

[Raja Indrajit Pratap Babadur Sabi.]

rights compulsorily, it would naturally affect the zamindars and they would not like to give this right, which otherwise they would have spontaneously given to tenants whom they would think worthy of it. I may say that even in such close relationship as that of father and son the amendment proposed would make their relations less harmonious and friction would not be infrequent. So my submission is that as there is already a clause in this Bill and the zamindar has a right to confer occupancy right on tenants they should be left alone, and it should be watched whether or not they confer on their tenants such rights and treat them leniently and fairly. Under the circumstances, Sir, I would submit that this amendment is absolutely unnecessary and undesirable and should be thrown out.

Fandit Govind Ballabh Pant: I do not think it is necessary for me to inflict a speech on the honourable members of the House on an unpalatable subject at this late hour. Besides, so far as I have been able to follow the arguments of those who have opposed my amendment, I find that in principle they agree with me. They also feel that to some extent that the omission of a provision of this character in this Bill is a defect in the Bill. But their argument is—let us wait for some time and when public opinion matures further we will introduce it. Well, it has always been one of the weaknesses of Government—they have not been influenced except by coercion of public opinion and sometimes not until it has manifested itself in a tangible form. So if such a state should be reached before they move it is for them to take the risk. I am of the opinion that even if we anticipate public opinion on a question which on its merits is sound and right and proper, it is a wise thing to handle it in time and to set the house in order before it gets into flames. Sir, I was asked why was it that I did not desire occupancy rights for every tenant. It is because I do not want occupancy rights for a person who bears only the name of a tenant but does not really cultivate the land. I want occupancy rights for him who really desires to occupy the land; I want occupancy rights for him who really continues to cultivate his land for a considerable length of time to assure his zamindar of his *bona fides*, and to demonstrate his interest in land and his desire to advance the cause of agriculture. It is because I desire such persons to have vested interests in land which will go on from generation to generation that I want to confine those rights only to those who cultivate their land for twelve years continuously without sub-letting any portion of it. Then again, I do not want to prohibit sub-letting in the manner in which the Hon'ble the Finance Member desires to prevent it. I want to make it worth the while for the tenant to take to his land with all the zeal that he can command, and if you make it worth his while to do so you will introduce that psychological element in his activity which will lead to the growth of agricultural development to a much larger extent than any artificial rule of restriction. Then it has been put to me—why have occupancy rights not been conferred on those who have been cultivating land even before this but have not completed their twelve years? It is because I admit that in giving statutory tenure you are conferring a privilege on the present non-occupancy tenants. I do not press that they should get more at the outset than what is being conferred in the form of statutory tenure until and unless they have established their *bona fides*. I give

them a new starting point with the passage of this Bill and say to them now it is for you to work out your own salvation. There is no impediment in your way; you are not going to be ejected as previously; if you really desire to cultivate your fields; here you are, take to it, work on, satisfy us that you love agriculture and we will see that you get that which will enable you to continue your labour in a more profitable manner. It is because I believe that agricultural interests will thereby be promoted and the tenant encouraged to do something to his advantage and to the advantage of his landlord and his holding that I am taking the passage of this Act as the starting point for the new rights. Let it not be said that the zamindars will be put to very great disadvantage. They will have the power of acquiring land for their own cultivation. And do not forget that under the provisions of this Bill they are being allowed 25 lakhs of acres of *khudkasht* to be converted into *sir*. That land, if it had been formerly let for twelve years would have acquired occupancy status, but it can now be let for years and yet retain its character as *sir*. On the other hand statutory rights are being conferred only on about double that area, and if these tenants are given the opportunity of improving their holdings by taking to cultivation seriously, it will conduce to the welfare of the community at large. I think, Sir, it is not necessary to deal with the various other arguments that have been raised. We have been told that this Bill is not a slavish copy of the Oudh Rent Act. Well, I can only say this, that it is a slavish copy of the Oudh Rent Act so far as the rights and interests of the tenants are concerned. I should very humbly ask for a single exception in this Bill which is more to the advantage of the tenant than the provisions of the Oudh Rent Act. And if I can be told a single one I shall revise my opinion. All those disadvantages which were introduced by the Oudh Rent Act are being introduced in this province of Agra, while there are several variations that are detrimental to his interests. I may at the same time say that I do not care whether a thing is to the benefit of tenant or to his disadvantage so long as it is right and proper. It does not appear to me a sound reason that it should not be introduced simply because it is being taken from the Oudh Rent Act. But I feel that in this particular respect the tenant in Agra should have this privilege not only because he has been enjoying it for a considerable length of time, but because I hold, and hold very strongly, that in the interests of the community at large such a privilege should be extended to him.

Question put, that the above words be inserted in clause 16.

The House divided Ayes: 24; Noes, 59.

Ayes

Mr. H. David.
Babu Sangam Lal.
Babu Mohan Lal Saksona.
Babu Damodar Das.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijmandan Prasad Misra,

Pandit Bhagwat Narayan Bhargava.
Pandit Jhanni Lal Pande.
Thakur Har Prasad Singh.
Thakur Keshava Chandra Singh Chaudhri.
Pandit Sri Krishna Dutt Pathwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhy.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Dr. Jaikaran Nath Misra.
Babu Sita Ram.

NOM.

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut. Nawab Muhammad Almad
 Sa'id Khan.
 Hon'ble Rai Rajeshwar Ball.
 Hon'ble Thakur Fajendra Singh.
 Hon'ble Nawab Muhammad Yusuf.
 Mr. G. B. Lambert.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Elliott, Bart.
 Mr. P. H. Tillard.
 Mr. H. A. Lane.
 Mr. R. L. Yorke.
 Mr. R. Burn.
 Mr. A. W. Pim.
 Mr. B. J. K. Hallowes.
 Mr. E. L. Norton.
 Mr. H. G. Billen.
 Mr. R. J. S. Ford.
 Colonel A. W. R. Cochran.
 Mr. A. H. Mackenzie.
 Mr. M. F. P. Hecheurofer.
 Babu Khem Chand.
 Lala Krishan Lal.
 Rai Jagdish Prasad Sahib.
 Chaudhri Jswant Singh.
 Rai Sahib Chaudhri Steoraj Singh.
 Lala Babu Lal.
 Thakur Rajkumar Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.

Raja Suryapal Singh.
 Lala Chakan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Lieut. R. J. Durga Narayan Singh.
 Raja Narayan Pratap Singh.
 Raja Sri Kishna Dutt Dube.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 Raja Indrajit Pratap Bahadur Sahi.
 Bhaya Hanuman Prasad Singh.
 Rai Bahadur Thakur Mashai Singh.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Rao Sahib Abdul Hameed Khan.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Mau'vi Muhammad Obaid-ur-Rahman Khan.
 Khan Bahadur Hafiz Hidayat Hussain.
 Khan Bahadur Shaikh Masud-uz-Zaman.
 Khan Bahadur Mr. Muhammad Ismail.
 Mau'vi Abdul Hakim.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq
 Husain.
 Khan Bahadur Mau'vi Muhammad Fazl-ur-
 Rahman Khan.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Munsibi Siddiq Ahmad.
 Shaikh Abdus Samad Ansari.
 Raja Shambhu Dayal.
 Raja Jagannath Baksh Singh.
 Mr. Tracey Gavin Jones.

Question, that clause 16, as amended, put and stand part of the Bill, agreed to.

The Council was then adjourned till Monday, July 5.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Monday, July 5, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m.,
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(100).

Hon'ble Sir Sam O'Donnell.	Lieut. Raja Durga Narayan Singh.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.	Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Hon'ble Rai Rajeshwar Bali.	Pandit Sri Krishna Dutt Paliwal.
Hon'ble Thakur Rajendra Singh.	Babu Parsidh Narayan Anad.
Hon'ble Nawab Muhammad Yusuf.	Pandit Yajna Narayan Upadhyaya.
Mr. G. B. Lambert.	Raja Sri Krishna Dutt Dube.
Mr. E. A. H. Blunt.	Rai Sahib Babu Dip Narayan Roy.
Kunwar Jagdish Prasad.	Rai Bahadur Thakur Hanuman Singh.
Sir Ivo Elliott.	2nd Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Mr. P. H. Tillard.	Raja Indrajit Pratap Bahadur Sahi.
Mr. H. A. Lane.	Bhaya Hanumat Prasad Singh.
Mr. R. L. Yorke.	Pandit Govind Ballabh Pant.
Mr. R. Burn.	Pandit Har Govind Pant.
Mr. A. W. Pim.	Mr. Mukandi Lal.
Mr. B. J. K. Hallowes.	Raja Shankar Sahai.
Mr. E. L. Norton.	Dr. Jaikaran Nath Misra.
Mr. H. G. Billson.	Rai Bahadur Thakur Mashal Singh.
Mr. R. J. S. Dodd.	Khan Bahadur Mr. Muhammad Aslam Saifi.
Colonel A. W. R. Cochrane.	Maulvi Zahur-ud-din.
Mr. A. H. Mackenzie.	Rao Sahib Abdul Hameed Khan.
Mr. M. F. P. Herchenröder.	Maulvi Shahab-ud-din.
Raja Muhammad E'jaz Rasul Khan.	Khan Bahadur Chaudhri Amir Hasan Khan.
Raja Bahadur Brij Narayan Rai.	Mr. Muhammad Ismail Ali Khan.
Mr. H. O. Desanges.	Maulvi Muhammad Obaid-ur-Rahman Khan.
Mr. H. David.	Khan Bahadur Hafiz Hidayat Hussain.
Babu Khem Chand.	Khan Bahadur Shaikh Masud-uz-Zaman.
Lala Kishan Lal.	Khan Bahadur Mr. Muhammad Ismail.
Babu Narayan Prasad Arora.	Maulvi Abdul Hakim.
Babu Sangam Lal.	Dr. Shafa'at Ahmad Khan.
Babu Mohan Lal Saksena.	Khan Bahadur Saiyid Muhammad Ashiq Hussain.
Babu Damodar Das.	Khan Bahadur Maulvi Fasih-ud-din.
Babu Jai Narayan Chaudhri.	Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Babu Bhagwati Sahai Bedar.	Khan Bahadur Hakim Mahbub Ali Khan.
Thakur Manjit Singh Rathor.	Khan Bahadur Mr. Ashiq Hussain Mirsa.
Rai Jagdish Prasad Sahib.	Khan Bahadur Munshi Siddiq Ahmad.
Chaudhri Jaswant Singh.	Raja Saiyid Ahmad Ali Khan Alvi.
Rai Sahib Chaudhri Sheoraj Singh.	Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Pandit Nanak Chand.	Shaikh Abdus Samad Ansari.
Lala Babu Lal.	Rai Bahadur Lala Bihari Lal.
Thakur Rajkumar Singh.	Rai Bahadur Lala Mathura Prasad Mehrotra.
Thakur Shiva Narayan Singh.	Raja Shambhu Dayal.
Rai Bahadur Babu Ram Nath Bhargava.	Lieut. Raja Shaikh Intiaz Rasul Chau.
Rai Amba Prasad Sahib.	Raja Jagannath Bakhsh Singh.
Rai Bahadur Pandit Kharagjit Misra.	Mr. E. M. Souter.
Raja Suryopal Singh.	Mr. Tracey Gavin Jones.
Lala Dhakan Lal.	Dr. Ganesh Prasad.
Babu Nemi Saran.	
Rao Sahib Kunwar Sardar Singh.	
Thakur Sadho Singh.	
Pandit Brijnandan Prasad Misra.	
Pandit Bhagwat Narayan Bhargava.	
Pandit Jhanni Lal Pande.	
Thakur Har Prasad Singh.	
Thakur Keshava Chandra Singh Chaudhri.	

QUESTIONS AND ANSWERS.

STARRED QUESTIONS.

* 1. **Khan Bahadur Mr. Muhammad Aslam Saifi** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

* 2 to * 7. **Lieutenant Raja Durga Narayan Singh** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

PROMOTION TO IMPERIAL SERVICE.

* 7. **Dr. Shafa'at Ahmad Khan** : Will the Government be pleased to state how many members of the Provincial Civil Service (Executive branch) have been promoted to the Imperial Service in accordance with the recommendations of the Lee Commission?

Hon'ble Sir Sam O'Donnell : The honourable member is referred to the answer given to starred question No. 67 for June 29, 1926.

* 9. **Dr. Shafa'at Ahmad Khan** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

LOANS.

* 10. **Dr. Shafa'at Ahmad Khan** : Will the Government be pleased to lay on the table a statement of the loans granted by the Loan Commissioners this year?

Hon'ble Thakur Rajendra Singh : None so far.

RETENTION OF THAKURDWARA TAHSIL, MORADABAD.

* 11. **Dr. Shafa'at Ahmad Khan** : Have the Government decided to retain the Thakurdwara tahsil?

Hon'ble Sir Sam O'Donnell : Yes.

CO-OPERATION COMMITTEE'S REPORT.

* 12. **Dr. Shafa'at Ahmad Khan** : Will the Government be pleased to state what measures, if any, they intend to take or have taken with regard to the report of the Committee on Co-operation?

Hon'ble Thakur Rajendra Singh : The report, which has recently been received by Government, is under consideration.

* 13. **Dr. Shafa'at Ahmad Khan** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

DEVELOPMENT BOARD.

* 14. **Dr. Shafa'at Ahmad Khan** : How many meetings of the Development Board have been held this year?

Hon'ble Thakur Rajendra Singh : None so far.

UNSTARRED QUESTIONS.

1 and 2. **Khan Bahadur Maulvi Fasih-ud-din** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

HEREDITARY DARBARIS.

3. **Mr. Muhammad Ismail Ali Khan** : What are the qualifications which, according to Government, are a condition precedent to the making of persons hereditary darbaris ?

Mr. G. B. Lambert : A hereditary darbari must be an Indian gentleman of good family and local influence. In addition to this general principle, the right of a seat in darbar is also hereditary—

(a) in the case of holders of all hereditary titles, and

(b) in the case of taluqas in Oudh, subject to the restriction that only one representative of each taluqa is ordinarily admitted to the darbar list.

4. **Mr. Muhammad Ismail Ali Khan** : Will the Government be pleased to place a statement on the table containing the names and the qualifications of the existing hereditary darbaris ?

Mr. G. B. Lambert : A list is placed on the honourable member's table.

(See Appendix A, page 394.)

5. **Mr. Muhammad Ismail Ali Khan** : What, if any, privileges or rights are attached to the position of the hereditary darbaris ?

Mr. G. B. Lambert : The only privilege which distinguishes a hereditary darbari from other darbaris is that the eldest son or other heir automatically succeeds to the seat on the former's death.

6. **Mr. Muhammad Ismail Ali Khan** : Will the Government be pleased to state the objects, if any, of making people hereditary darbaris ?

Mr. G. B. Lambert : The object is to give recognition to the status of the gentlemen who are hereditary darbaris.

SINGLE-RECORD SYSTEM IN COURTS.

7. **Mr. Muhammad Ismail Ali Khan** : Is the Government aware that the courts in these provinces have been directed to keep only one record, and that in English, of the depositions of witnesses made before them, in place of the double record in English and vernacular which was formerly kept ?

Mr. R. L. Yorke : The single-record system is being tried experimentally in the courts of district judges and subordinate judges only.

8. **Mr. Muhammad Ismail Ali Khan** : Does the Government approve of this innovation ? If not, is Government prepared to take steps to have the innovation abolished ?

Mr. R. L. Yorke : Government sanctioned the experiment, but if after proper trial the system is not found to be satisfactory, Government will be prepared to consider its abolition.

9. **Mr. Muhammad Ismail Ali Khan :** Is the Government prepared to take steps to ascertain the opinion of the members of the Bench and the Bar throughout the provinces as regards this innovation and make it available to this Council ?

Mr. E. L. Yorke : The High Court hopes to be able to give a considered opinion on the success or failure of the system at the end of the current year. Pending receipt of that opinion, Government see no object in taking the steps suggested.

RAJPUR-MUSSOORIE MOTOR ROAD.

10. **Mr. Muhammad Ismail Ali Khan :** What is the amount of money spent on the construction of the motor road from Rajpur to its present terminus up to March 31, 1926 ?

Mr. P. H. Tillard : The present terminus of the road is Kolukhet and the amount spent on the road to this terminus is Rs. 4,99,158. The road is however being extended to Bhatta at a cost of Rs. 4,25,602 : work on this section is in progress.

11. **Mr. Muhammad Ismail Ali Khan :** When was the present terminus of the road reached and at what cost and how far is it from Mussoorie ?

Mr. P. H. Tillard : The present terminus, Kolukhet, was reached in 1923 and the cost is as stated in answer to question No. 10. The extension to Bhatta will probably be completed either this year or next year.

The distance from Kolukhet to Mussoorie *via* bridle-road is six miles, whilst from Bhatta to Mussoorie will be four and one-fourth miles.

12. **Mr. Muhammad Ismail Ali Khan :** Is it a fact that the point from which the motor road starts has been made inaccessible to motors ?

Mr. P. H. Tillard : Yes. The point above Rajpur from which the present road starts, is inaccessible for public motor vehicles because of the dangerous nature of the road through Rajpur.

13. **Mr. Muhammad Ismail Ali Khan :** Is it also a fact that from the present terminus of the road the public cannot reach Mussoorie either by motor or by rickshaw ?

Mr. P. H. Tillard : Yes.

14. **Mr. Muhammad Ismail Ali Khan :** What is the use which the existing motor road is put to either by the public or by Government or by the local authorities ?

Mr. P. H. Tillard : The existing road up to Kolukhet is used by cart-traffic to Mussoorie, as it has replaced the lower portion of the old cart-road. It is also used by a few private motorists who proceed thence *via* Jharipani.

15. **Mr. Muhammad Ismail Ali Khan :** What was the amount of the contribution made by the Mussoorie municipality towards the construction of the Rajpur-Mussoorie motor road ? When was it paid ?

Mr. P. H. Tillard : The amount of the contribution made by the city board, Mussoorie, was one lakh. It was paid in four instalments as detailed below :—

- (a) First instalment Rs. 30,000 in 1917-18.
- (b) Second instalment Rs. 24,000 in 1918-19.
- (c) Third instalment Rs. 24,000 in 1919-20.
- (d) Fourth instalment Rs. 22,000 in 1920-21.

16. Mr. Muhammad Ismail Ali Khan : Is it a fact that the Mussoorie municipality made this contribution for a motor road starting from Rajpur and terminating in Mussoorie proper ?

Mr. P. H. Tillard : No. The contribution was made to recover the extra cost between a cart-road and bridle-road between a point north of Rajpur and Kolukhet, as the existing bridle-road of this length may at any time be taken away by a landslide and should this have occurred all communication with Mussoorie would have been stopped.

17. Mr. Muhammad Ismail Ali Khan : Has the Government carried out the undertaking on which it asked the Mussoorie municipality to contribute and accept the contribution aforesaid ? If not, then when does Government expect to be able to do so ?

Mr. P. H. Tillard : (a) Yes.

(b) Does not arise.

18. Mr. Muhammad Ismail Ali Khan : Is the Government aware of the existence of a strong feeling of grievance amongst the tax-payer inhabitants and visitors of Mussoorie at the unfinished state of the motor road ?

Mr. P. H. Tillard : Yes.

19. Mr. Muhammad Ismail Ali Khan : Is the Government prepared to push on with the extension of the motor road from its present terminus to Mussoorie in view of the fact that without such extension the money already spent on the road is absolutely unremunerative ? When does the Government expect the motor road to reach Mussoorie ?

Mr. P. H. Tillard : The Government's original intention was to construct the Mussoorie road as far as Bhatta connecting that terminus with Barlowganj by means of a bridle-road. The section of the road to Bhatta will probably be completed either this year or the next year, and in order to complete the project as described above, it only remains to construct the Rajpur diversion and Bhatta-Barlowganj bridle-road.

In 1924, the city board, Mussoorie, urged that the Mussoorie road be extended from Bhatta to Mussoorie proper and that the Bhatta-Barlowganj bridle-road be omitted. The city board, Mussoorie, offered to pay for this extension. Subsequently, however, it submitted proposals which involved the granting of a monopoly to a private company and, finally, in August, 1925, asked that Government should construct the extension offering a contribution in annual instalments, the amount of which was not stated. Upon this the Government decided to undertake the construction of the Rajpur diversion and to postpone to a later date the construction of the extension from Bhatta to Mussoorie proper. Government are prepared to complete the Rajpur diversion as soon as funds are available and are voted by the Council.

20. **Mr. Muhammad Ismail Ali Khan :** Is the Government aware that the connexion of the present terminus of the road to Barlowganj (only a few hundred yards away) will be more useful and remunerative and could be accomplished much more quickly and cheaply than the proposed diversion at Rajpur? If not, then will the Government take steps to satisfy itself on this question?

Mr. P. H. Tillard : Government are aware that the connexion from Bhatta to Barlowganj by bridlo-path is only estimated to cost Rs. 12,768, whereas the diversion to Rajpur is estimated to cost Rs. 1,44,717, from which it is obvious that the former is the cheaper. But as regards usefulness and remunerativeness, Government do not agree, as until the diversion from Rajpur is completed, the utility of the section from a point north of Rajpur to Bhatta cannot be fully developed.

21. **Mr. Muhammad Ismail Ali Khan :** [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

THE AGRA TENANCY BILL.

CLAUSE 17.

Conferment of right of
occupancy.

17. (1) The following persons shall be competent to confer a right of occupancy—

- (a) a proprietor;
- (b) a lambardar, with the written concurrence of all the co-sharers whom he represents;
- (c) a mortgagee in possession, with the written concurrence of the mortgagor;
- (d) a mortgagor in possession, with the written concurrence of the mortgagee, or with the sanction of the district judge;
- (e) a person whose proprietary interest is the subject of litigation in a court of law, with the authority of the court;
- (f) the natural or certificated guardian of a minor proprietor, or the manager of a lunatic's estate, with the sanction of the district judge;
- (g) the manager of a joint Hindu family with the written consent of the members of the family who have attained majority and, where any of the members of the family is a minor, with the sanction of the district judge;
- (h) a thekadar in accordance with the provisions of section 201(2);
- (i) the court of wards in land under its superintendence.

(2) A right of occupancy may be conferred—

- (a) upon a tenant in his holding or in any part thereof,
- (b) upon any person in land in which no tenancy subsists,
- (c) upon any person in land in which a tenancy exists, with effect from the date of the extinction of the tenancy.

(3) Notwithstanding anything in the foregoing sub-sections, a right of occupancy shall not be conferred in grove-land or pasture-land or upon a corporation, math or other artificial person.

(4) A right of occupancy may be conferred for valuable consideration or gifted, provided that such a right shall not be conferred in land under the superintendence of the court of wards except for valuable

consideration, and that the court of wards shall not delegate its powers to confer such rights.

(5) A right of occupancy shall be conferred by registered instrument only.

(6) Notwithstanding the provisions of section 50, the initial rent payable by a tenant upon conferment on him of a right of occupancy shall be the rent which is agreed upon between him and his landlord.

Khan Bahadur Hafiz Hidayat Husain: I beg to move that the following explanation be added in sub-clause (1) (a) after the word "proprietor":—

"A Hindu widow in possession of property will be deemed competent to confer occupancy rights with the consent of the entire body of reversioners or the sanction of the district judge."

The reason for my amendment is this. We find in certain villages that Hindu women are in possession of the property as owners after the death of their husbands. According to Hindu law, a Hindu widow is not the absolute owner of the property; she is what is called a limited owner. She is entitled to the usufruct of the property, and not to the capital. That is to say, she can spend all the money she derives from the property left to her by her husband in any way she likes. The courts have gone so far as to say that even if she purchases any property from the usufruct of the property, the succession to such property which has been so purchased by her will in the absence of other circumstances be regulated by law relating to succession of *stridhan*, that is to say, the property will descend from her to her heirs and not to her husband's reversioners. Now, if, as it sometimes happens, a Hindu widow is under the influence of the people of her *maika* or other unscrupulous persons who have no interest whatever in the preservation of the property and she begins to acquire the property and confer occupancy rights indiscriminately, the interests of the reversioners will greatly suffer. Therefore, I think that where a Hindu widow is in possession of the property she may be allowed to confer occupancy rights only on condition that she can secure the consent of all the reversioners, and in case of absence of the reversioners or their withholding their consent or in case they be minors with the consent of the district judge.

Babu Sangam Lal: I wish to propose an amendment, and I hope that the House will accept it. I have got a similar amendment, but I propose to move it as an amendment to the amendment moved by my honourable friend Hafiz Hidayat Husain Sahib. I propose that for the words "Hindu widow in possession of property" the words "Hindu women holding a limited estate" be substituted; that for the words "entire body of reversioners" the words "nearest reversioners" be substituted; and that the word "written" be inserted before the word "consent."

I need not say much in support of this amendment, because the position of a Hindu daughter is exactly the same as the position of a Hindu widow. Therefore, if you put the word "woman" that will meet the case. If a daughter inherits the property of her father she also holds limited estate under the Hindu law; so the word "woman" will include daughter also. As for the words "in possession of property" there may be a Hindu woman whose husband has given her the power of transferring the whole right; such widows will be excluded.

Hon'ble the President: What is the idea? Is the sanction to be an alternative to consent or is it failing the consent?

Khan Bahadur Hafiz Hidayat Husain : That will be alternative to consent.

Hon'ble Sir Sam O'Donnell : It seems to me that there are objections to this clause. We of course desire that occupancy rights should be conferred by landlords. But I do think that the working of this amendment will give rise to difficulties. The Hindu widow or the Hindu woman with limited estate will have to obtain the consent of all reversioners. Now, it may be very difficult to ascertain exactly who the reversioners are. Supposing the consent of all the reversioners is not obtained, that there is a single reversioner whose consent has not been obtained, then the whole transaction may be invalidated. We do not desire that when a tenant pays valuable consideration for occupancy rights there should be any question later as to his title. That seems to me one difficulty.

The next difficulty is that I do not see what the district judge has got to do with the matter. The district judge undoubtedly comes in in the case of a minor. If a guardian wishes to do something affecting the interests of a minor, it is reasonable, in certain cases at any rate, that he should have to obtain the consent of the district judge. But this proposal is, as I understand, that if the reversioners refuse, then the widow or the daughter can go to the district judge, although the reversioners are not minors. I do not see why the district judge is dragged into this affair at all. It does not seem to me that he has got anything to do with it.

I have no objection in principle to anything which will enable occupancy rights to be conferred more liberally than they would otherwise be conferred. But I think that the amendment is one which is likely to give rise to a good deal of litigation ; and that the result of it may be that the tenant will part with valuable consideration and afterwards find that he has paid money for nothing.

Mr. Mukandi Lal : I think that the Government can get out of the difficulty very easily if my amendment is accepted. My amendment is to delete the words " or the sanction of the district judge." I give my reasons for the deletion of these words. I hope that if the amendment is accepted as amended by me there will be no difficulty. So far as the principle is concerned, Government sees no objection to accept the amendment proposed by my friend Hafiz Hidayat Husain with the amendment of Babu Sangam Lal. One objection that the Government has is with reference to nearest reversioners. So far as experience of lawyers and the Government is concerned, law courts have not been able to find any insurmountable difficulty in finding out who the nearest reversioners are. This principle is accepted so far as Hindu law and the law of inheritance are concerned. The question of nearest reversioners is not difficult to define and to be decided by law courts. Therefore the difficulty about nearest reversioners is not at all an insurmountable one. If the original amendment as put forward by Hafiz Hidayat Husain is accepted, then there may be some difficulty, viz., that there will be no end to the finding of prospective reversioners and the Hindu widow will have to be hunting for reversioners to obtain their consent. Once we say " the nearest reversioner " as understood under the Hindu law and the law of inheritance, there will be no difficulty. I do agree with the Government when they say " why should the district judge be dragged into this affair " when he is not required to decide the point of ordinary Hindu law so far as nearest reversioners are

concerned. If this amendment, subject to my amendment, is accepted, I think the ordinary Hindu law will be followed in this case also. Therefore, if the words "or the sanction of the district judge" are deleted, I hope the amendment would be acceptable both to the Government and to the House.

Pandit Nanak Chand : I find that the amendment is limited to Hindu widows only and that Christian and Muslim widows do not come within its purview. This seems to be unjustified, and no case has been made out for it. Very often the relations between the widow and the reversioners are not altogether happy, and these widows might find themselves hard pressed to raise some money for their legitimate requirements, which they will not be able to raise without the consent of their reversioners. We should not introduce this distinction on communal grounds.

Hon'ble the President : Is the honourable member opposing the amendment on communal grounds ?

Pandit Nanak Chand : Yes, Sir. This restriction in the matter of conferring of occupancy rights will unduly hamper the right of a Hindu widow to confer occupancy rights on her tenants—a right which her sisters in other communities, both Muslim and Christian, would enjoy. Moreover, the conferring of occupancy rights does not amount to alienation of proprietary rights; the proprietor who succeeds to such widow will be entitled to recover rent and eject the tenants, as a proprietor. But the present amendment will be an undue restriction on the privileges of a Hindu widow. Under the present Act, the widows can allow accrual of occupancy rights by not ejecting tenants within twelve years. This right is now proposed to be taken away from their tenants, which will indeed be an undue restriction on the privilege of a Hindu widow.

Maulvi Abdul Hakim : I have not been able to understand the question which has been raised as regards Muslim and Christian women. The amendment has been put forward by my friend because there is a real difference between the powers of alienation of a Hindu woman getting property from her husband and those of a Muslim woman getting property from her father or husband. In the case of a Hindu widow or woman she has not the power to alienate property, while in that of a Muslim woman, she has the power to do so and nobody can object to it. If, therefore, you are not going to make a provision like the one proposed in the amendment, I fear that on the death of a Hindu woman the question might arise as to the extent of the waste or alienation made by her, and the result will be that the tenant who will acquire occupancy rights will have to suffer much on account of the litigation that will ensue. In the circumstances it is fair that a provision should be laid down to the effect that a Hindu woman may be allowed to confer occupancy rights only with the consent of the nearest reversioners.

Thakur Har Prasad Singh : I support the amendment moved by my friend Khan Bahadur Hafiz Hidayat Husain, as amended by Babu Sangam Lal. I anticipate no difficulty if the words "or the sanction of the district judge" remain there, because the same words occur in sub-clause (g). There also the same legal difficulty can arise; but the words are there, and a district judge can sanction in the case of the manager of a joint Hindu family. I am referring to sub-clause (g). The same can be done in the case of a Hindu widow. There can be no difficulty about finding

(Thakur Har Prasad Singh.)

the presumptive reversioners. This can be easily done. A Hindu widow can thus create a right of occupancy in favour of a tenant with the consent of the nearest reversioners. If, however, they do not agree to the conferment of this right, the sanction can be obtained from the district judge and this alternative is therefore very necessary. The conferring of occupancy rights is not actually an alienation of the proprietary rights. If the presumptive reversioners do not consent to the creation of such rights, there is no harm if power is given by legislation to the district judge to sanction such rights.

Thakur Keshava Chandra Singh Chaudhri: I rise to support the amendment moved by Khan Bahadur Hafiz Hidayat Husain Sahib as amended by Babu Sangam Lal Sahib. I think an explanation is absolutely necessary. In the first place, as observed by my honourable friend Mr. Abdul Hakim, courts might come to the conclusion that a Hindu widow is not included in the word "proprietor" and there might be litigation and the tenants may have to suffer a good deal. Further, the difficulties pointed out by the Hon'ble the Finance Member will arise, if this explanation is not added. In the second place, this explanation will be very much beneficial to the reversioners themselves. In a great majority of cases it happens that the property is a very small one and the widow cannot make both ends meet and has to transfer proprietary right itself which is valid under Hindu law. In such cases the reversioners may give consent to the conferring of occupancy rights, if this course is beneficial to them, and in others they may refuse. In the latter case the widow can do so with the sanction of the district judge. With these remarks I support the amendment.

Rai Bahadur Thakur Hanuman Singh: I rise to oppose the amendment which has been moved by my honourable friend Khan Bahadur Hafiz Hidayat Husain and other amendments which have been proposed to the said amendment. If this amendment is allowed to become law, then I am sure that a good deal of litigation will spring up, and the widows will always try to make much money after the death of their husbands by conferring occupancy rights and realizing premiums to the great injury of their reversioners. I would, with your permission, Sir, give an example. Supposing there are two reversioners equally entitled to inherit a widow's estate: one of them happens to be a favourite of the widow and the other not, then if the widow with the consent of the reversioner who is her favourite confers a right of occupancy, the other reversioner will wait for his opportunity and after the death of the widow will sue for annulment of the agreement between the widow and the occupancy tenant. Then, there will be men who will try to induce such widows to give away the land to occupancy tenants, so that there may be disputes in the family, and when there is litigation, which is bound to happen, they may benefit themselves. There are in several places *dehatsi* barristers who always try to persuade people to litigate with a view to get money from them. If the amendment is passed, it would have a disastrous effect in course of time. Therefore I would request the honourable members of this House not to accept the amendment either as it stands or as amended.

Khan Bahadur Mr. Muhammad Ismail: Sir, with your permission I would like to move an amendment to the amendment. I understand

that the Hon'ble the Finance Member has accepted the principle of the amendment but thinks that we should not drag in the district judge, because he has got nothing to do with the proprietor.

Hon'ble Sir Sam O'Donnell: I think the omission of the words "with the sanction of the district judge" is an improvement. My other objection remains as regards the clause, namely, that under this amendment it might quite well be that the tenant would be paying a consideration for a right which afterwards he might not get. A reversioner may turn up from a hundred miles, and in that case the whole transaction may be upset.

Hon'ble the President: Does the honourable mover intend to propose his motion still or does he withdraw it?

Khan Bahadur Mr. Muhammad Ismail: I withdraw it.

Khan Bahadur Hafiz Hidayat Husain: All that I wanted by my amendment was that the right of a Hindu female to confer occupancy rights be not restricted. I gather from the speech that has just been delivered by my friend Rai Bahadur Thakur Hanuman Singh that he does not wish that a Hindu female be permitted to confer a right of occupancy, and if that is so and if the opinion of the majority be that it should be so, all that I can say is that, we will be restricting a Hindu widow's rights unduly. These rights should be clearly defined and I do think that she should have power to confer occupancy rights subject to the limitation contained in my amendment. For she might live for fifty years' after the death of her husband.

Hon'ble the President: Is the honourable member withdrawing his amendment?

Khan Bahadur Hafiz Hidayat Husain: No.

Hon'ble Sir Sam O'Donnell: I agree that Mr. Makundi Lal's amendment is an improvement. I hope, Sir, that amendment will be put first. As regards the remainder of the amendment, the objection which I have previously stated still seems to me to be valid. It is said that it is an easy matter to find out who the reversioners are. Now, I would like to invite the attention of the Council to the report of the 1924 Committee. In that report it is said that a person with a limited estate should not have this power, i.e. the power of conferring occupancy rights, because it is difficult to ascertain who is the nearest reversioner. So far as I can make out, the whole committee were unanimous on that point. No doubt the law on the subject is quite clear, but it is another matter to say who the actual reversioners are to any particular estate. A reversioner might be living a hundred miles away; he might be living in Calcutta. How is the tenant to know who the reversioner is? Very often it is the case that the widow and the reversioners are not on very good terms and the widow might be willing to ignore certain of the reversioners. Then how is he to find out what reversioners have been left out? On the other hand, if all the reversioners have not given their consent then at any moment a reversioner might turn up and say "my consent has not been given, the whole transaction is invalid and no occupancy right has been conferred." The tenant then loses his money. I dare say he might institute a suit, but he might be put to a lot of expense and might not in the end be able to

[Hon'ble Sir Sam O'Donnell.]

recover anything. That is the reason why I consider this amendment is undesirable.

Question, that the amendment proposed be modified in the following manner, put and agreed to:—

(1) *For the words "widow in possession of property" substitute the words "woman holding a limited estate."*

(2) *Between the words "the" and "consent" insert the word "written."*

(3) *For the words "entire body of reversioners" the word "nearest reversioner" be substituted.*

Question, that the words "or sanction of the district judge" stand part of the amendment, put and agreed to.

Question put, that the following clause be inserted:—"A Hindu woman holding a limited estate will be deemed competent to confer occupancy rights with the written consent of the nearest reversioner or the sanction of the district judge."

The House divided: Ayes, 40; Noes 34

Ayes.

Raja Bahadur Brij Narayan Rai.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Thakur Manjit Singh Rathor.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Babu Nemi Saran.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Thakur Har Prasad Singh.
Thakur Keshava Chandra Singh Chaudhri.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhya.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
Second-Lieut. Sahibzada Ravi Pratap
Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.

Bhaya Hanumat Prasad Singh.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan
Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman
Khan.
Khan Bahadur Hafis Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Khan Bahadur Saiyid Muhammad Ashiq
Husain.
Khan Bahadur Maulvi Muhammad Fazl-
ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad
Rashid-ud-din Ashraf.
Rai Bahadur Lala Beheri Lal.
Lieut. Raja Shaikh Imtiaz Rasul Khan.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Halliwell.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. B. J. S. Dodd.

Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenröder.
Raja Muhammad E'jaz Rasul Khan.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Babu Jai Narayan Chaudhri.
Rai Sahib Chaudhri Sheoraj Singh.
Pandit Nanak Chand.
Lala Babu Lal.
Rai Bahadur Thakur Hanuman Singh.
Maulvi Shahab-ud-din.
Khan Bahadur Maulvi Fasih-ud-din.
Shahzade Abdos Samad Ansari.
Rai Bahadur Lala Mathura Prasad Meh-
rotra.

CLAUSE 17 (1) (a).

Hon'ble Sir Sam O'Donnell: I move that in clause 17 (1) (a) after the words "proprietor" add "or permanent tenure-holder." This is merely intended to correct an accidental omission. If honourable members will refer to clause 18(8) they will see that it says "where a landlord or permanent tenure-holder has conferred a right of occupancy under section 17 in land which is his *sir*." The permanent tenure-holder is practically in the same position as the landlord and we are treating him as such all through the Bill. The permanent tenure-holder can acquire *sir*. Therefore there is no reason why a permanent tenure-holder should not be allowed to confer occupancy rights. In fact, as I have said, clause 18(8) gives him that power and we are merely correcting an accidental omission.

Question, that the words "or permanent tenure-holder" be added, put and agreed to.

CLAUSE 17 (1) (b).

Khan Bahadur Hafiz Hidayat Husain: I beg to move that a proviso to sub-clause (b) be added as follows:—

"Provided that if any co-sharer is minor or is otherwise unable to act, with the sanction of the district judge obtained on application by the natural or certificated guardian of such a co-sharer."

I do not think I need say anything on this, because if any co-sharer is a minor then he will be incompetent to give assent to the conferment of occupancy rights by the *lambardar*.

Hon'ble Sir Sam O'Donnell: I think this is a quite reasonable amendment, which should be accepted by the Council.

Question, that the above proviso be added, put and agreed to.

CLAUSE 17 (1) (g).

Khan Bahadur Hafiz Hidayat Husain: I beg to move that the following words be omitted:—

"With the written consent of the members of the family who have attained majority and where any of the members of the family is a minor, with the sanction of the district judge."

I do not think it is any use taking away the power of a *karta* of a Hindu family. The *karta* of a joint Hindu family has got every right and power to manage the property in the best way he can. Courts appoint only a guardian of the person, but they have consistently refused to appoint a guardian of the property of a minor co-parcener in joint Hindu family because nobody can say till property is divided by metes and bounds as to which portion belongs to the minor and which to the adult members of the families.

I hope the House will accept the amendment.

Rai Bahadur Thakur Hanuman Singh: I rise to oppose the amendment which has been moved by my honourable friend Hafiz Hidayat Husain. He has said that the section has the effect of curtailing the powers of the *karta* of the family. I say that the section has the effect of safeguarding the interests of the co-sharers. There are *kartas* of families who will for their own benefit give away the joint property of

[Rai Bahadur Thakur Hanuman Singh.]

their families. If the amendment will be accepted by the Council, I think it will injuriously affect the interests of the junior members of the Hindu family. Therefore I hope the Council will not allow such an injurious amendment which will be disastrous to the interests of the junior members of large families.

Thakur Keshava Chandra Singh Chaudhri: With your permission I rise to support the amendment of Khan Bahadur Hafiz Hidayat Hussain with one modification which I want to make to it. I would like to delete the words "and where any of the members of the family is a minor, with the sanction of the district judge" from the amendment. My reasons are, I think the sanction of all the major members of a joint Hindu family is enough. I know of many rulings of our High Court and of other High Courts and in them it has been said that the sanction of all the major members of the joint Hindu family is legally enough . . .

Hon'ble the President: Your amendment makes no provision for the case of a family in which there is a minor.

Thakur Keshava Chandra Singh Chaudhri: It is not necessary.

Hon'ble the President: I am afraid I cannot allow an amendment which will make the legislation a bit vague.

Thakur Keshava Chandra Singh Chaudhri: Then I will put it like this; "With the written consent of all the major members of the family." It will then not be necessary to obtain the sanction of the district judge on behalf of the minor. I beg to move that the following words be substituted for the words "with the sanction of the district judge":—

"With the consent of the natural guardian."

I think it will very much complicate matters if every time, when the major members agree to transfer property, they will have to go to the district judge for obtaining sanction on behalf of the minor members. I have known cases in which the natural guardian wished to transfer property, but they did not do so because they did not like to go to the district judge. Sometimes they have to go to a district judge who sits at a distance of 150 miles or more and this proves very inconvenient to them. It is for these reasons that I have moved my amendment and I hope it will be accepted by the Council.

Pandit Govind Ballabh Pant: With your permission, Sir, I would amend the amendment moved by my friend Thakur Keshava Chandra Singh. I would add the following words after the word "minor":—

"if the guardian is the father or the brother of such minor."

I would leave the rest of the sub-clause as it stands so as to convey the idea that where the minor member is not so related, the sanction of the district judge will be necessary. The sub-clause would then run something like the following:—

"The manager of a joint Hindu family with the written consent of the members of the family who have attained majority and, where any of the members of the family is a minor, with the consent of the natural guardian, if the guardian is the father or the brother of such minor, and in other

cases, with the sanction of the district judge where any of the members of the family is a minor."

This will further limit the scope of the amendment of my friend Thakur Keshava Chandra Singh. I feel that in the case of his brother or his son we can well trust a natural guardian to take a beneficial interest in the minor, while in cases where he is more distantly related, I think it is advisable that the sanction of the district judge should be sought.

Hon'ble the President : Would it not be better if the whole thing be put in the form of a proviso because there is too much repetition there?

Pandit Govind Ballabh Pant : Yes. If the substance of it is adopted, I will put it in in the proper form.

Maulvi Abdul Hakim : I am opposed to all the amendments that have been put forward. I think sub-clause (g) as it stands is quite right and proper. It is true that the manager of a joint Hindu family has powers but his powers are limited. He can make only such arrangements as are necessary and beneficial to the family. It may be that the manager of a joint Hindu family may confer occupancy rights today and tomorrow other members of the family may bring a suit to set aside their conferment. The poor tenant will then be put to much useless and unnecessary expense of litigation. Therefore I think it is proper that the clause should be clear on this point and the clause (g) as it stands provides that.

Hon'ble Sir Sam O'Donnell : I agree with the member who spoke last. I think it is very doubtful whether if this amendment were carried it will still not be open to the other members of the family to come forward and attack the transaction. Certainly under the general Hindu law a manager could not enter into a transaction of this kind without the consent of the other members of the family.

Babu Damodar Das : He can sell the property.

Hon'ble Sir Sam O'Donnell : In that case he would have to show legal necessity. At any rate, if we omit these words the whole transaction might possibly be declared invalid by the courts. It seems to be very undesirable that we should have a provision of that kind. A tenant might pay valuable consideration and later on he might find that he paid his money for nothing. I have no objection in substance to the amendment proposed by Pandit Govind Ballabh Pant but either his amendment or the clause in the Bill should, I think, be adopted.

Babu Sangam Lal : With your permission, Sir, I move that the following proviso be added :—

" Provided that if a minor has a father or a brother as his natural guardian, the written consent of the latter will be valid."

Thakur Keshava Chandra Singh Chaudhri : I withdraw my amendment,

Amendment of Thakur Keshava Chandra Singh, by leave, withdrawn.

Hon'ble the President : The amendment of Pandit Govind Ballabh Pant falls to the ground after that withdrawal.

Hon'ble the President : The amendment moved by Khan Bahadur Hafiz Hidayat Husain is that in clause 17(1)(g) the following words be omitted :—

"With the written consent of the members of the family who have attained majority and where any of the members of family is a minor, with the sanction of the district judge."

The question is that these words form part of the clause. I wish to make it clear that if these words are struck out, the amendment will be carried but if the words in the Bill remain as they are, then the proviso could be taken up. Those members who want the proviso to be added to the clause as it stands should vote for the retention of the words in the Bill and vote against the amendment.

The question is, that the words in the Bill stand part.

Question, that the above words stand part of the Bill, put and agreed to.

*Question, that the following proviso be added, put and agreed to :—
"Provided that if a minor has a father or a brother as his natural guardian the written consent of the latter will be valid."*

Khan Bahadur Maulvi Fazl-ur-Rahman Khan : Sufficient or valid? I think the former will be better.

Hon'ble Sir Sam O'Donnell : Verbal amendments can be moved later.

Hon'ble the President : Yes.

CLAUSE 17 (1) (i).

Rai Sahib Lala Jagdish Prasad : I beg to move that for the words "the court of wards in land under its superintendence," substitute the words "the Board in land under the superintendence of the court of wards."

My object in moving this amendment is that as in the case of the court of wards it is the minors' interest that is at stake so there ought to be some restrictions on the conferment of occupancy rights by the court of wards. Of course the Select Committee has imposed certain restrictions which appear in sub-clause (4) but it is not clear whether by the use of the term "court of wards" here it is meant that the Board of Revenue alone would be empowered to confer occupancy rights or whether the special managers or collectors can confer such rights. Of course it is laid down in sub-clause (4) that the court of wards cannot delegate such powers, but it is not clear to me as to what is intended by the term "court of wards". If the intention of this clause be that the Board of Revenue is alone empowered to confer occupancy rights, then I will not like to press my amendment; but if this clause as it stands is liable to misinterpretation, then I hope that in the interests of minors my amendment will be acceptable to the Council.

Mr. B. Burn : The honourable member has expressed his wish that it might be made quite clear that this power of conferring a right of occupancy in an estate which is under the management of the court of wards shall be exercised only by the Board of Revenue and not by a Commissioner or by a Collector. This Bill uses the term "court of wards." The term "court of wards" is defined in the Court of Wards Act, which says

that the Board of Revenue shall be the "Court of Wards" in the United Provinces. In that Act certain powers are delegated to special managers, Collectors, and Commissioners but this power is certainly not delegated. If the honourable member will refer to sub-clause 4 he will find that the court of wards is expressly forbidden to delegate the power to confer such rights and that it is not empowered to confer rights except for valuable consideration. I hope this explanation will satisfy the honourable member.

Rai Sahib Lala Jagdish Prasad: In view of the explanation given by Mr. Burn I withdraw my amendment.

Amendment, by leave, withdrawn.

Babu Sangam Lal: I beg to move that the following be added :—

(k) manager of public or private trust.

My object in moving this amendment is . . .

Hon'ble the President: The honourable mover's object is quite obvious.

Hon'ble Sir Sam O'Donnell: It seems to me that there is one strong objection to this proposal. The powers of the trustee are defined in the instrument of trust. If there is nothing in the law or the trust deed to restrict the powers of the trustee, then he can confer occupancy rights. On the other hand, if either the law or the trust deed confers upon the manager only limited powers, why should the law of trust or the trust deed be overridden? It seems to me entirely wrong that when under the trust the manager has only certain powers given to him that he should be entitled to do something outside those powers. That is my objection. If he has the full powers of a proprietor then he can confer these rights. If he has not such powers then I do not think he ought to be entitled, in defiance of the trust deed to confer these rights. The result would be to upset the terms of the trust deed.

Maulvi Shahab-ud-din: I oppose this amendment. The honourable mover of this amendment knows full well that both under the Hindu and Muhammadan law the lands in the hands of a trustee are inalienable in any way. They cannot be alienated either by mortgage or by sale. If this right is allowed to trustees it will be against the spirit of both Hindu and Muhammadan law and also against the Trust Act. Under these circumstances I think if an amendment like this is passed and power given to the trustees it will be ruinous to the trusts under their care.

Babu Sangam Lal: I agree with the Hon'ble the Finance Member that if there are terms in the trust deed that the trustee should not have the power of conferring occupancy rights, then certainly he should not get that power. But if there are no such conditions in the trust deed, then I do not see any reason why trustees should not be allowed to do so. In order to meet the objection of the Hon'ble the Finance Member if you will permit me, Sir?

Hon'ble the President: I cannot permit the honourable member to amend his own motion.

Babu Sangam Lal: My point was, that if permission is not given, a difficulty is likely to arise. Under the present law a trustee can certainly

[Babu Sangam Lal.]

confer occupancy right, if there are no conditions to the contrary in the trust deed. But I am very doubtful if under this Bill they will be able to do it because I do not think the trustees are the proprietors of the property.

Hon'ble the President : I am afraid I cannot give the permission asked for.

Hon'ble Sir Sam O'Donnell : The powers of the trustee are defined either in the law on the subject or in the trust deed. The trustee may be given powers in this deed which are equivalent to the powers of a proprietor. On the other hand, his powers may be limited. It is a question of fact to be determined by the law on the subject of trustees. There is, however, no reason why we should attempt to modify the terms of the trust deed itself.

Question, that the words " manager of public or private trust " be inserted, put and negatived.

Babu Sangam Lal : I move, Sir, that the words " Or upon a corporation, *math* or other artificial person " be omitted. My reason for moving this amendment is that if there are four or five or six persons who form an association and want to do farming on co-operative lines and they want to acquire occupancy rights by paying a sufficient consideration, it will not be possible for them to acquire occupancy rights if these words remain and in fact it will defeat the very object which we have in view, namely, farming on improved lines, because knowing the financial position of tenants, as we do, it is impossible for any single tenant to engage in farming on a large scale unless they combine, and in order to give security to such a body of persons it is necessary that occupancy rights should be allowed to be conferred on such a body for consideration. I think, Sir, under the present law such a thing can be done. If you will refer to section 19, you will find that statutory rights can arise in favour of an artificial person or corporation. Therefore I see no reason why we should put a ban on a corporation or such associations as want to engage in such activities. Besides this, under the present law occupancy rights can be conferred on two or three persons but they will be called only co-tenants. I do not see why if those persons combine and give a name to that body and call it a corporation, why they should not be given occupancy rights on that account. As regards *math*, at present occupancy rights do arise in favour of *maths*.

(Hon'ble Sir Sam O'Donnell—No, no.)

Very well, Sir, then I omit the *math* and ask for only corporation or other artificial persons to be omitted.

Khan Bahadur Hafiz Hidayat Husain : I have a similar amendment to the one proposed by Mr. Sangam Lal, but will confine myself only to " artificial persons, " of his amendment. In my own knowledge there are scores of occupancy tenures recorded in the name of Sri Thakurjee. Sri Thakurjee is a juristic—nevertheless an artificial person and capable of holding occupancy tenure. Therefore I think that the words " or other person " should be omitted.

Mr. Mukandi Lal: With your permission, Sir, and if there is no objection I beg to propose that the words "upon corporations or other artificial persons" be omitted and that the word "*math*" should remain in the section. I hope, Sir, that we all who stand for agricultural development, will realize that we will deprive agricultural agencies which stand for the agricultural development of our province of the right if we exclude corporations and artificial bodies from the section.

Khan Bahadur Mr. Muhammad Ismail: I think that if the amendment is carried it will entail enormous difficulties in succession for one thing. For instance, in the case of a *math* you do not know who the successor will be. A large number of persons will come forward and say, "We are the *chelas* of the deceased mahant" and so on. So, it will increase litigation. The difficulty raised by the honourable mover will be obviated if a certain number of individuals who want to start a farm take the lease in their individual names. Why should they call themselves a corporation or a company? Under these circumstances my submission is that the law as it stands is perfectly clear.

Hon'ble Sir Sam O'Donnell: As Khan Bahadur Mr. Muhammad Ismail has just pointed out, there is nothing to prevent ten, twenty or more persons from acquiring occupancy rights in the land if they wish to cultivate the land in common; and if the landlord is willing to confer occupancy rights on them there is nothing in the law to prevent a transaction of that kind. But it does seem to me that there are strong objections to conferring occupancy rights on corporations, *maths* or artificial persons. I have never as a matter of fact known of the case of a corporation cultivating land. A corporation might own land; but in that case it could sub-let the land, and the actual cultivators would not be occupancy tenants.

I have seen it suggested in an article in a newspaper that co-operative societies might wish to become occupancy tenants. I do not know whether Mr. Sangam Lal has inspired that article or whether he has been inspired by it. But I have never heard of the case of a co-operative society which wished to take up land in this way. It seems to me, as Khan Bahadur Mr. Muhammad Ismail has pointed out, that very great difficulties will arise with regard to succession. For example, a society might be a society with power to add to its numbers. What is to happen if one of them dies? Under the ordinary law his son would succeed, but in the case of a society, if the son is a minor he will not be a member of the society, therefore he will be excluded.

Khan Bahadur Hafiz Hidayat Husain has said that a number of occupancy tenures are recorded in the name of Sri Thakurjee. As a matter of fact under the present law occupancy rights cannot be acquired by a temple, and if such an entry has been made it is invalid. If the mutawalli is to be allowed to hold occupancy rights, then the actual cultivator will be a sub-tenant, which is not what we desire. There is nothing to prevent the starting of a co-operative farm. Any number of persons can go to a landlord and say:—"We want occupancy rights and we are willing to pay for them." Then if he gives occupancy rights they can cultivate the land together. But it is quite a different thing to have occupancy rights recorded in the name of a society, *math* or artificial person.

Babu Sangam Lal: The Hon'ble the Finance Member as well as Khan Bahadur Mr. Muhammad Ismail, agree that it is desirable that a number of persons should be allowed to acquire occupancy rights, that they should be allowed to combine. But there is another difficulty which the Hon'ble the Finance Member has overlooked. There is a section in the Indian Companies Act which says that if more than twenty persons enter into a transaction, then it would be illegal unless they form themselves into an association. Therefore, that difficulty will arise. If we are agreed that it is desirable to allow these persons to combine then there should not be any difficulty. Otherwise the Indian Companies Act will have to be amended.

Hon'ble Sir Sam O'Donnell: I do not follow the point about the Companies Act. What I meant was that there is nothing to prevent twenty persons going to a landlord and saying, "We wish to cultivate this land, we wish to get occupancy rights." There is nothing to prevent that. The Companies Act refers to quite a different state of affairs. It refers to people forming themselves into definite associations of a special character. It does not refer to a case where a landlord wishes to give occupancy rights to a number of persons. Therefore, I think, there is really no force in the objection. If there is any objection to saying twenty persons, then nineteen persons, let us say can get occupancy rights.

Question, that the words "or upon a corporation, math or other artificial person" stand part of the Bill, put and agreed to.

Question, that clause 17, as amended, stand part of the Bill, put and agreed to.

NEW CLAUSE, 17A.

Pandit Nanak Chand: Before clause 18 I have got an amendment. It is a new clause. I beg to move that the following clause be added:—"17A. Every statutory tenant who has cultivated land continuously for a period of five years without sub-letting shall have a right to be declared an occupancy tenant on payment of a premium determined by court which shall not exceed six times the annual rental value of the land."

I find that this amendment has been hailed with a peal of laughter by my friends on this side of the House. It has been proposed in this Bill that occupancy rights shall be extinguished if a landlord wants a land for certain specific purposes and the maximum compensation that has been proposed for the acquisition of an occupancy holding has been fixed to be six times the annual rental of that holding. In this amendment I propose that if six times the annual rental value of an occupancy holding is considered to be a fair price and just compensation for ousting out an occupancy tenant then the liberal compensation which I propose for the acquisition of occupancy rights by statutory tenants after continuous cultivation for a period of five years is a proposition which should appeal to my friends in this House and should be accepted.

I consider my proposition to be quite liberal, fair and just. It is a well-known fact that the occupancy rentals are much lower than the statutory rentals. The maximum compensation proposed for the acquisition of statutory holdings in the Bill is four times the rental of statutory holdings. Thus a statutory tenant, if my motion is accepted, will have to pay ten times the statutory annual rental for the acquisition of

occupancy rights, or between twelve and sixteen times the occupancy rental of that holding. For these reasons I consider that the compensation that I have proposed is very fair and ought to be acceptable to the House.

Khan Bahadur Maulvi Fasih-ud-din : I am very sorry to note that our friend, the honourable member from Bulandshahr was rather annoyed at what he calls the peal of laughter from the zamindar benches.

Pandit Nanak Ohand : I assure my honourable friend that I was not annoyed in the least.

Khan Bahadur Maulvi Fasih-ud-din : I must assure him that we did not mean any insult to him at all. Brutus was an honourable man, so all of us are honourable men, and we do not wish to insult one another. However, we were rather amused at the most novel and fascinating amendment of our friend. He has made a full calculation of the figures in order to show that the premium he proposes is a good one and that it is a good price for the acquisition of occupancy rights. I for my part must confess that I have not been able to follow this rule of thumb that he has given, but I only guess that there was something very substantial in the calculation and that our friend was just as good a mathematician as my friend Dr. Ganesh Prasad. However, it is a very admirable plan of our friend to give occupancy rights to the statutory tenants. In other words, he wants to say that a statutory tenant should be a tenant for life, but that after five years he should not be a tenant for life but a tenant with a right of occupancy. This is a position which has to be stated for the sake of refutation. A tenant must be either a life-tenant or an occupancy tenant. He cannot be both, and I think that the position that he has taken up is certainly not a position that a mathematician should take. I therefore oppose this.

Hon'ble Sir Sam O'Donnell : After the debate that we had on Saturday last I do not think I need say much regarding this amendment. It is on the same lines with certain modifications as the amendment which was rejected on that day. A tenant under this amendment must cultivate only for five years instead of twelve years, and, on the other hand, must pay compensation. I believe, Sir, that a great many landlords will be willing to confer occupancy rights in return for the compensation mentioned in this amendment. But the amendment proposes that in all cases it should be compulsory on the landlord to grant occupancy rights, or at any rate that occupancy rights should accrue on this payment. Now, Sir, as I have said, I need not conceal my belief that probably the time will come eventually when occupancy rights will be conferred all round. But before that can happen, public opinion must have moved farther than it has now moved. In the existing circumstances and in the present state of public opinion we think that the provisions in the Bill go as far as is practicable and therefore I am not prepared to support this amendment.

Question put, that the above clause be inserted after clause 17.

The House divided : Ayes, 20 ; Noes, 72.

Ayes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Bai Bakshana.

Babu Damodar Das.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Bathor.

Ayes.

Pandit Nanak Chand.
 Thakur Shiva Narayan Singh.
 Babu Nemi Saran.
 Pandit Brijnandan Prasad Misra.
 Pandit Bhagwat Narayan Bhargava.
 Pandit Jhanni Lal Pande.
 Thakur Har Prasad Singh.

Thakur Keshava Chandra Singh Chaudhri.
 Pandit Sri Krishna Dutt Paliwal.
 Babu Parsidh Narayan Anad.
 Pandit Yajna Narayan Upadhyaya.
 Pandit Har Govind Pant.
 Mr. Mukandi Lal.
 Dr. Jaikaran Nath Misra.

Noes.

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
 Hon'ble Rai Rajeshwar Bali
 Hon'ble Thakur Rajendra Singh.
 Hon'ble Nawab Muhammad Yusuf.
 Mr. G. B. Lambert.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Elliott.
 Mr. P. H. Tillard.
 Mr. H. A. Lane.
 Mr. R. L. Yorke.
 Mr. R. Burn.
 Mr. A. W. Pim.
 Mr. B. J. K. Hallows.
 Mr. E. L. Norton.
 Mr. H. G. Billson.
 Mr. R. J. S. Dodd.
 Colonel A. W. R. Oochrane.
 Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenroder.
 Raja Muhammad E'jaz Rasul Khan.
 Raja Bahadur Brij Narayan Rai.
 Mr. H. C. Desanges.
 Babu Khem Chand.
 Lala Kishan Lal.
 Babu Jai Narayan Chaudhri.
 Rai Jagdish Prasad Sahib.
 Chaudhri Jaswant Singh.
 Rai Sahib Chaudhri Sheoraj Singh.
 Lala Babu Lal.
 Thakur Rajkumar Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Lala Dhakan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Lieut. Raja Durga Narayan Singh.
 Rai Bahadur Pandit Balbhadra Prasad Tiwari.

Raja Sri Krishna Dutt Dube.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
 Raja Indrajit Pratap Bahadur Sahi.
 Bhaya Hanumat Prasad Singh.
 Raja Shankar Sahai.
 Rai Bahadur Thakur Masbal Singh.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Rao Sahib Abdul Hameed Khan.
 Maulvi Shahab-ud-din.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Mohammad Obaid-ur-Rahman Khan.
 Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Shaikh Masud-us-Zaman.
 Khan Bahadur Mr. Muhammad Ismail.
 Maulvi Abdul Hakim.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq Husain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Mr. Ashiq Hussain Mirza.
 Khan Bahadur Munshi Siddiq Ahmad.
 Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
 Shaikh Abdus Samad Ansari.
 Rai Bahadur Lala Behari Lal.
 Rai Bahadur Lala Mathura Prasad Mehrotra.
 Lieut. Raja Shaikh Imtiaz Rasul Khan.
 ———— Nath Baksh Singh.
 Mr. E. M. Souter.
 Mr. Tracey Gavin Jones.
 Dr. Ganesh Prasad.

CLAUSE 18.

18. (1) A person on whom a right of occupancy has been conferred under the provisions of section 17 may present an application to be recorded as an occupancy tenant to the court of the assistant collector in charge of the sub-division, and shall verify such application in presence of the court.

(2) The court, after giving notice to the person who is alleged to have conferred the right of occupancy and satisfying itself that such a right has been conferred in accordance with the provisions of section 17, shall cause the applicant to be recorded as an occupancy tenant in the annual registers maintained under section 33 of the United Provinces Land Revenue Act, 1901. If the court is not satisfied as aforesaid, it shall reject the

(3) Where the court rejects an application on the ground that the person purporting to confer the right of occupancy was not competent to do so, it shall, if a question of proprietary right is in dispute and has not been already determined by a court of competent jurisdiction, frame an issue on the question of proprietary right and submit the record to the competent civil court for the decision of that issue only.

(4) The civil court, after re-framing the issue, if necessary, shall decide that issue only and return the record together with its finding on that issue, to the court of the assistant collector in charge of the sub-division, which shall accept the finding of the civil court on the issue referred to it.

(5) Where the court of the assistant collector in charge of the sub-division rejects an application under this section, it may [after taking into consideration the finding of the civil court, if an issue has been submitted to the civil court under sub-section (3)] award to the applicant such damages (including the return of the consideration, if any, paid by the applicant to the person purporting to have conferred the right of occupancy) as it may deem just.

(6) The court of the assistant collector in charge of the sub-division or the civil court to which an issue is submitted for a finding under sub-section (3) may, either of its own motion or on the application of any person, direct that any person be made a party to the proceedings, but nothing in this section shall debar a person who has not been made a party to such proceedings from establishing any right in any civil or revenue court.

(7) An appeal against an order of the court of the assistant collector in charge of the sub-division under this section shall lie to the commissioner, provided that if a question of proprietary right has been in issue between the parties claiming such right in the court of first instance and is in issue in the appeal, the appeal shall lie to the district judge.

(8) Notwithstanding anything in section 14, where a landlord or permanent tenure-holder has conferred a right of occupancy under section 17 in land which is his *sir*, the following consequences shall ensue if the right of occupancy is still subsisting at the time of a transfer which under the provisions of section 14 would ordinarily cause the accrual of ex-proprietary rights :—

(a) If the transfer is by mortgage, ex-proprietary rights shall not accrue unless and until the right of occupancy is extinguished.

(b) If the transfer is by foreclosure or sale no ex-proprietary rights shall accrue.

Khan Bahadur Hafiz Hidayat Husain : I beg to move that sub-clauses (3), (4), (5), (6) and (7) of clause 18 be omitted and the following be substituted for clauses (3) and (4) :—

(3) If the person alleged to have conferred the right of occupancy is recorded as having proprietary interest in land which requires to be recorded in the registers prescribed by clauses (a) to (d) of section 32 of the United Provinces Land Revenue Act, III of 1901, the court shall presume that he has it.

But nothing in this sub-section shall affect the right of any person to establish by suit in the civil court that such a person has not such proprietary right.

(4) The application for recording of a right of occupancy shall be presented within six months from the date the instrument conferring right of

[Khan Bahadur Hafiz Hidayat Husain.]

occupancy has been registered and an appeal against the order of the court of the assistant collector in charge of the sub-division under this section shall lie to the commissioner.

Sub-clause (8) be re-numbered as sub-clause (5).

Section 18, to amend which I have given notice, is a very important section and I hope the Council will bear with me for five minutes and take note of the obvious objections to the draft of the section. I think that the framework and the policy of this Bill are broad-based on three points. The first is a continuity of tenure and no unnecessary litigation: the second is more extensive powers to revenue courts and some finality to their decisions; and, the third, is that persons in possession of property to be maintained in possession and their rights respected. Let us visualize for a minute what will happen if clause 18 as drafted is passed. It will lead to enormous litigation both in the civil and revenue courts. With your permission, Sir, I would read out the section and explain to the House why it should be radically altered. Sub-clause (3) says that where the court rejects an application on the ground that the person purporting to confer the right of occupancy was not competent to do so, it shall, if a question of proprietary right is in dispute and has not been already determined by a court of competent jurisdiction, frame an issue on the question of proprietary right and submit the record to the competent civil court for the decision of that issue only. This clause says that the revenue court, if it finds that the person purporting to confer the right of occupancy had no right to do so, it shall reject the application. What is, therefore, the necessity after rejection of the application to refer the matter to the civil court and continue the litigation. Sub-clause (4) says that the civil court, after re-framing the issue, if necessary, shall decide that issue only and return the record together with its finding on that issue to the court of the assistant collector in charge of the sub-division, which shall accept the finding of the civil court on the issue referred to it. The obvious objection to this sub-clause is that it does not say whether a revenue court, after it has received the finding of the civil court, shall review the decision which it has already given under sub-clause (3). Sub-clause (5) says that where the court of the assistant collector in charge of the sub-division rejects an application under this section it may after taking into consideration the finding of the civil court, if an issue has been submitted to the civil court under sub-section (3) award to the applicant such damages including the return of the consideration, if any, paid by the applicant to the person purporting to have conferred the right of occupancy as it may deem just. This sub-clause, if passed, will confer on the revenue courts rights which ought legitimately to be exercised by the civil courts. Rights of awarding damages and compensation are the functions of the civil courts. If a person who has got no right to confer occupancy rights deceives another person, and leads him to believe that he has such a right, I think that the person defrauded should go to the civil court for getting compensation from the person defrauding. He has also his remedy under section 420 of the Indian Penal Code against such a person. In this particular case, the revenue courts are trenching upon grounds which ought legitimately to belong to the civil courts. Sub-clause (6) says that the court of the assistant collector in charge of the sub-division or the civil court to which an issue is submitted for a finding under sub-section (3) may, either of its own motion or on the application of any person, direct that any person be made

a party to the proceedings, but nothing in this section shall debar a person who has not been made a party to such proceedings from establishing any right in any civil or revenue court. This sub-clause opens the door to uncalled-for litigation. Suppose *A*, who is in possession of the property and has his name recorded in the khewat, confers occupancy rights on *B*, *C*, who has got an eye on the property, puts in an application that *A* has got no right to do so, but that, although his name is not even recorded in the khewat, he is the proprietor. A question of proprietary title arises, and the revenue court would, proceeding under clause (3), first decide whether *A* has got the right or not and may then refer the matter to the civil court. And now *A* will be called upon to vindicate his title to the property at the cost of thousands of rupees. I ask is it fair that for a few hundred rupees which *A* may be getting, he should be made to run the risk of involving his property worth lakhs and lakhs of rupees and be subjected to the delays and uncertainties of law? Therefore, I think, that in cases like these, we should draw on the analogy of section 201 of Act I of 1901, and for the revenue courts that ought to be considered sufficient. If *A*'s name is entered as holder of the property in the khewat, *A*'s rights should be presumed. If *C* considers that *A* has got no right then *C* should go to the civil court and have his title to the property adjudicated. The entry should be binding on the revenue courts—enough for them to presume that a person whose name has been recorded has got a right. Why should power be given to *C*, who disputes *A*'s right, to come by a trap door? I maintain that by introducing this clause you open the door to a flood of litigation. My amendment gives power to the revenue court to presume right on the basis of entry of name in the khewat, power to transfer property and consequential incidents of that power. Therefore I maintain that as long as those entries are there the revenue courts should not go behind those entries and should not in any case be a party to unnecessary and infructuous litigation.

Mr. R. Burn : The drafting of this clause is perhaps capable of improvement. But the effect of the amendment which has been moved would be to change to a considerable extent the practice of the courts in the province of Agra. In the first place the honourable mover wishes to attach to the annual records of patwaris the same presumption of correctness which at present attaches only to the records after formal revision.

Khan Bahadur Hafiz Hidayat Husain : I did not say (e). I refer to sub-clauses (a) to (d).

Mr. R. Burn : That is, to the khewats. Under Act II of 1901 (the present Tenancy Act) I think such a presumption is only attached in section 201 (3). That, Sir, relates to suits between co-sharers—a totally different state of things from the case which we are now considering. In Oudh, as honourable members are aware, the revenue courts decide any issue that arises and any question of proprietary right which has been decided by a revenue court, is always open to challenge in the civil court. In the province of Agra we proceed in a different way. Where a question of proprietary right arises in a case between the landlord and tenant, either the issue was remitted to the civil court for trial, or at any rate the appeal went to the civil court. The present section 201 (3) has now been altered in clause 271 (1) of the Bill, and the procedure which we propose to adopt is that where a question of proprietary right arises an issue must be framed by the revenue court and remitted to the civil court for trial; the civil court can alter the issue, if necessary, and it then returns its finding, and

[Mr. R. Burn.]

the revenue court is bound to decide in accordance with it, and the appeal in such cases will go to the civil court. The point is that where a cultivator is concerned we wish to get the thing settled with the minimum of trouble to him. In Oudh very frequently a case will be litigated from the court of the assistant collector up to the Board and it will then go back again and be fought out from the munsif's court to the Chief Court or the Privy Council. The present procedure has been in force in the province of Agra for a considerable time and we hope that in the Bill considerable improvements have been made.

As I said in the beginning, the wording of clause 18 is certainly capable of improvement. But I think that the same principle should be maintained. I should like to move an amendment to the motion before the House. It falls into two parts. The first is that in clause 18 (2) for the last three words "reject the application" read "proceed as directed in sub-sections (3) and (4)." The second part is that in the first and second lines of sub-section (3) omit the words "The court rejects an application on the ground that" and insert the words "the question arises as to whether" and in the third line for the word "it" read "the court." The effect of these changes will, I think, make it clear when the court is not satisfied as to whether a person has the right to confer a right of occupancy. It will frame an issue, remit it to a civil court, obtain the findings of the civil court and then decide in accordance with it.

Khan Bahadur Mr. Muhammad Ismail : I think the objection raised by the honourable mover, Khan Bahadur Hafiz Hidayat Husain, has not been met by Mr. Burn. The question is whether in all cases where occupancy right has been conferred the revenue court should be compelled to inquire into the question whether the person who has conferred the occupancy right had authority to do so or not. This will mean multiplication of litigation. The person who is recorded as a proprietor after an order of the mutation court is the person to sue the tenant for recovery of rent. He is authorized to eject the tenant. He is the person who is called upon to pay Government revenue, and for all intents and purposes he is accepted as the proprietor until there is a decree of the civil court ejecting him or declaring that he is not the proprietor. I do not see why in all cases where occupancy right has been conferred it should be necessary to go into a lengthy and expensive inquiry into the question of proprietary right. The revenue court ought to accept the recorded proprietor as fully competent to confer occupancy rights and record the names of occupancy tenants on whom such rights have been conferred. It will be open to the person who objects to that to go to the civil court and ask for a declaration of the fact that the proprietor conferring the right was not authorized to do so. If the proper proprietor has to spend a lot of money over such inquiries, perhaps he would be discouraged to confer occupancy rights.

Hon'ble the President : I think the honourable member was a member of the Select Committee?

Khan Bahadur Mr. Muhammad Ismail : Yes. But this point did not strike me then. It has been brought to our notice now.

Khan Bahadur Masivi Fasih-ud-din : I think there is some slight misunderstanding about this matter. The provision, as it now stands in the Bill, is made to protect the interests of the tenant and not

the interests of the zamindar, for the reason that this provision prevents the tenant from being involved in further litigation after he has paid up the premium for the acquisition of his occupancy rights and the provision aims at settling the question as to whether the person who has conferred occupancy right is the right person. That is the only object of sub-clauses (3), (4), (5) and (6) and it was with this idea that these sub-clauses were put in. Now the present situation is what has been said by Mr. Burn. At present the presumption as to the accuracy of the entries in the khewat is in the favour of khewats that are prepared by the settlement officer. It is not in favour of the khewats that are prepared annually by the patwari. That is the present situation, and if this amendment that has been proposed is to be carried out it would mean that the same presumption of the correctness of the khewats would arise in the case of the khewat prepared by the patwari. The other difficulty that will arise, I think, on account of this amendment will be this. We see almost every day in revenue courts that one zamindar sues another's tenant for arrears of rent, and the tenant comes forward and says that he has paid up rent to another zamindar whose name is recorded in the khewat. Then these two zamindars fight and each of them claims proprietary rights to the exclusion of the other. Sometimes the result is, in fact very often, that the court lays down an issue whether zamindar A or zamindar B is the real proprietor and which of them is entitled to receive the rent and whether the rent was paid to a certain zamindar in good faith. Sometimes the question of proprietorship arises and the result is that under the existing law the issue is referred to the civil court for decision and this is exactly the contingency for which this section seeks to provide. I do admit that this is rather a roundabout procedure and it will entail a long litigation, but even under the existing law this state of affairs exists and a large number of cases are being referred to the civil court. I am not at all in favour of any presumption as to the entry of the name of a certain proprietor in the khewat being correct. I will give you, Sir, an example of my own. A certain friend of my father got his name entered in respect of a very big village in the khewat for some reason or other and that gentleman was the uncle of one of the members of this Council. His name remained in the khewat for over twelve years and my father had actually nothing to do with the management of the village. After the death of that gentleman my father put in an application for having the names of the heirs restored to the khewat. Contingencies of this kind may arise. The sub-clauses require a little remodelling, and Mr. Burn has suggested one or two amendments which have undoubtedly improved the sub-clauses, but I am not sure if they do not require some further amendment. All the same I adhere to the principle that the tenants should not be left in the dark as to the legitimacy of the right of the zamindar who confers occupancy right on him, and for this reason I think some sort of principle should find a place in this Bill.

Maulvi Abdul Hakim : I rise to support the amendment. I think the difficulty pointed out by Khan Bahadur Maulvi Fasih-ud-din does not arise. If two persons are recorded as proprietors in the khewat and if only one of them confers the occupancy right, surely under sub-clause (2) the court will not accept that conferment, and it was pointed out by Mr. Burn that presumption . . .

Khan Bahadur Maulvi Fasih-ud-din : Suppose they are in two different pattis ?

Maulvi Abdul Hakim : If they are in two different pattis, all the co-sharers can join and the right of occupancy can be conferred. It was pointed out by Mr. Burn that presumption of correctness applies only to khewats which are prepared at the time of the revision of records. That is not correct. Section 44 of the Land Revenue Act says that all entries in annual records-of-rights shall be presumed to be true and that applies to khewats. Therefore we find that there can be no dispute of the correctness of an entry in the khewat in a revenue court. If that entry is correct so far as a revenue court is concerned, there is no reason why the court should not accept a person as proprietor who is recorded there.

Mr. R. Burn : May I explain that the presumption attaches only to entries that can be made under the orders of the collector.

Maulvi Abdul Hakim : I suppose that entries in the khewat are made only after mutation of names, and mutation of names is made by the order of the collector. The point that has been raised by the honourable mover is that if you are going to put in sub-clauses (3), (4), (5) and (6) you are going to introduce unnecessary complications which will force a person whose name is recorded as a proprietor in the khewat to go to the civil court and have his right title determined. I think that this point has not been met. In these circumstances it is not necessary that he should be so forced.

Khan Bahadur Maulvi Fasil-ur-Rahman Khan : I rise to support the amendment that has been proposed by my friend Khan Bahadur Hafiz Hidayat Husain. The question that arises in respect of this clause is whether on an application being opposed the recorded zamindar is to be referred to the civil court or whether the revenue courts should be authorized to go into the question of title.

Hon'ble Sir Sam O'Donnell : We have not suggested that.

Khan Bahadur Maulvi Fasil-ur-Rahman Khan : Very well. The first part of my question still stands. It is known to every legal practitioner that the position of a plaintiff in the civil court is very unfavourable. Generally the burden of proving the whole case lies on the plaintiff in a civil court. Take the case of a person who is recorded as proprietor of a certain mahal or patti. He confers occupancy rights on the tenants of that patti. The tenants file applications in the court of an assistant collector. Applications are opposed by some one. If the assistant collector thinks that the opponent has a better title then he will at once refer the zamindar whose name is recorded in the khewat to the civil court. In giving this order the revenue court will be deciding, if not on paper, at least in its mind that the title of one party is better than that of the other. It is not advantageous to authorize revenue courts to go into matters of this kind. They are not always capable of deciding intricate questions of title. If an assistant collector in a hurry . . .

Hon'ble the President : The Bill does not say so.

Khan Bahadur Maulvi Fasil-ur-Rahman Khan : I do not mean actually authorizing; but he will have to decide in his mind whether he should sanction the application of the tenants or he should refer the recorded landlord to the civil court. This position will often arise.

Revenue courts have multifarious duties to perform. They are criminal courts at the same time ; they have to record dying declarations, have to go to jails for identification and to record confessions. So if a revenue officer hurriedly arrives at the conclusion that the person who is opposing the application has a better title, he will by a stroke of the pen refer the recorded proprietor to the civil court, and what will be the result? The result will be that the burden of proof will lie heavily on the person in whose name the land is recorded. This difficulty will be obviated if the amendment of my learned friend is accepted by the House. At times it may happen that in a petty case of this kind a proprietor whose name is recorded in revenue papers may have to prove his title in the civil court as plaintiff and it is possible he may lose the case, say on account of carelessness or for default or for some other reason. In this way, Sir, he will have a civil court judgement against his title. These difficulties will disappear, if my honourable friend's amendment is adopted. For these reasons, I support it very strongly.

I have one more observation to make in connexion with this amendment. I was a member of the Select Committee and certainly this point did not strike me there. But it is no wonder. In the 1924 committee some Government members as well as some non-official members were present. They unanimously drafted section 40 of this Bill. According to them they missed a very important point. The Government members have accordingly altered the clause. They have grown wiser in the course of two years. I am more fortunate because I have grown wiser in the course of one month and a half. With these words I support the amendment, and hope that the Council will adopt it.

Hon'ble Sir Sam O'Donnell : It appears to me that there is some misunderstanding regarding the effect of the clause as amended by our amendment. We are anxious that questions which arise as regards the conferment of occupancy rights should be determined as quickly as possible. We think that is very essential in the interest of the tenants. We propose accordingly that first an application should be made to the revenue court; if no question of title arises, then the revenue court can record the occupancy rights. That is the ordinary case. If, on the other hand, a question of title does arise, then that question must be referred to the civil court. That is the effect of our proposals. We do not suggest that the revenue court should decide disputed questions of title. We propose that if there is any dispute regarding the question of title then the question must go to the civil court. Now, Sir, there is nothing new in that proposal, because if the honourable members will turn to section 199 of the present Act they will find that that principle is already recognized. Under section 199 of the present Act if a question of title arises the revenue court can refer it to the civil court, so what we are proposing is not in the least novel or unprecedented. It has been suggested that third parties might suffer, but it is expressly provided that nothing in the proceedings shall effect any person who is not a party to those proceedings. Therefore I do not see how the interests of third parties can suffer. Then lastly, Sir, it has been said that there is a presumption under the Land Revenue Act that entries in the khewat are correct. As a matter of fact that is not necessarily so. Section 44 says that all entries in the annual registers made under subsection (3) of section 33 shall be presumed to be true and if you refer to section 33(3) you will see that it relates only to orders passed by the collector or the tahsildar regarding a change of transaction affecting those

[Hon'ble Sir Sam O'Donnell.]

registers; in other words what are ordinarily known as mutation proceedings. These are the only entries which are presumed to be correct. It may very well be that the entries in the khewat are wrong, and if that is so, then my point is this. The court under this amendment records the tenant as an occupancy tenant. The man who gave the rights is as a matter of fact not the proprietor. It is subsequently established in a civil suit that he is not. Meanwhile the tenant has paid his money; and it may be that the man who has purported to give him the rights is not in a position to repay him, or is unwilling to do so. That surely is not in the interests of the tenant. That sort of case is by no means unlikely to occur. It is a fairly common practice with a certain class of persons who are fighting among themselves as regards proprietary rights to start a campaign by granting a lease in favour of the tenant and thus raise the question of title in an indirect manner in the revenue courts. Therefore it may well happen that occupancy rights are given by a man who has no title or power to do so, and the unfortunate tenant finds later on that he has given his money for nothing. Accordingly we have suggested a procedure after very careful consideration in the select committee; I think the members of the select committee will bear me out as to that; we have suggested a procedure which is cheap and effective, and which, as far as I can see, does not in any way prejudice the rights of third parties.

Babu Jai Narayan Chaudhri: I rise to support the amendment moved by my friend Khan Bahadur Hafiz Hidayat Husain. If sub-clauses (3) to (8) are allowed to remain part of the Bill they will do more mischief than good. They proceed on the ground that the title of the tenant should be decided speedily and finally. But they do not take into consideration the title of the zamindar, which will be put to peril every time that an application for recording the rights of an occupancy tenant is made. It has been rightly pointed out by the Hon'ble the Finance Member that the third parties will not be bound by the decision arrived at by the civil court. In such a case every time, if there is a person who is desirous of gambling in litigation, he can take objection to title, and on each occasion and every time the revenue court will be obliged to frame an issue and send it to the civil court for trial and thus the title of the zamindar will have to be inquired into and decided upon several times in these proceedings and also without giving finality to the title of the tenant. Besides that, the zamindar will be loath to confer occupancy right upon any person simply for the fear that his title every time shall be involved in risk. So, for this reason, Sir, the very object of the Bill will fail. The people will be unwilling to confer occupancy rights upon tenants for the fear of their own title. Then, Sir, there is one other thing that the question of the title of a zamindar will be inquired into on a mere application. Every time that an application is made the question of title will be inquired into and decided by one court or the other. While in the case of a *bona fide* claim to the property one has in the ordinary course to resort to the civil court and file a regular suit. On these grounds I support the amendment of Khan Bahadur Hafiz Hidayat Husain and move that sub-clauses (3) to (8) be deleted.

Khan Bahadur Hafiz Hidayat Hussain: I still remain unconvinced by the arguments advanced for the maintenance of the provisions in the draft Bill. While I agree with the Hon'ble the Finance Member when he says that the question of title should be decided as speedily as

possible, I still maintain that his suggested remedies are open to serious objections. The whole question is this—do you want to give finality to revenue courts in matters like this, or not? If you do, then do not draw the title of third parties into controversy. The Hon'ble the Finance Member refers to section 199 of the present Act in support of the provisions of the Bill. Under that section if a plaintiff files a suit or application in a revenue court against his defendant, and the defendant pleads that he and not the plaintiff is the proprietor, then a question of title does arise, and that question has to be decided whether in the revenue court or civil court will depend on the procedure contained in that section. What you do here, however, is this. Suppose the Nawab of Chhatari or the Nawab of Jaunpur confers occupancy rights on his tenant. The tenant puts in an application and wants his name to be recorded as occupancy tenant. A third man having an eye on the property comes forward and says the Nawab is not the proprietor; the property is dedicated property, I am mutawalli and therefore I should be made a party to the case. He is made a party and the whole controversy is now opened out. The matter is referred to the civil court, and in that court the little to the entire property worth lakhs will have to be decided and adjudicated upon.

Government, too, will suffer, because no court fee will be required to be paid by this trafficker in litigation. If, however, a regular suit had to be filed, then probably thousands of rupees would be required for court fees, but here an adventurer who has an eye on the property has only to step into the revenue court and get the whole controversy decided for mere love. The adventurer may also incite a tenant to give to the proprietor a lump sum, a very handsome sum, for conferring occupancy rights, and the proprietor may be tempted. Then on the application of the tenant the entire procedure may again be repeated. I repeat that by this procedure you open the door to litigation. Your object ought to be to stop litigation as far as possible, but here you promote litigation which will cost nothing to the adventurer and the trafficker in litigation except an application costing eight annas only.

Hon'ble the President : But you let clause (2) remain as it is. The revenue court will have to be satisfied before it passes an order of that kind, and if *prima facie* there is a case, then the court will be satisfied.

Khan Bahadur Hafiz Hidayat Husain : I do not think there is any objection to the maintenance of sub-clause (2): that sub-clause says: "The court after giving notice to the person who is alleged to have conferred the right of occupancy and satisfying itself that such a right has been conferred in accordance with the provisions of section 17, shall cause the applicant to be recorded as an occupancy tenant in the annual registers maintained under section 33 of the United Provinces Land Revenue Act, 1901."

Here, according to the example I gave, if a person goes to the revenue court and says that he is not the proprietor . . .

Hon'ble the President : It is only when it is doubtful that the court will inquire into the title.

Khan Bahadur Hafiz Hidayat Husain : In that case what the court will do is to issue notice to the person conferring the right and it will be competent for the third person to come in and say: "I have got the right": then under my amendment, drawn on the analogy of section 201, the court ought to reject the application.

Hon'ble the President: It is for the House to give its judgement.

Khan Bahadur Hafiz Hidayat Husain: The honourable member of the Board of Revenue has referred to sections 201 and 32 of Act II of 1901. True section 201 in Act III of 1901 refers to suits between one co-sharer and another co-sharer. But I do not accept his interpretation of section 32. That section has to be read along with section 57 of Act III of 1901. Section 57 says:—

“ All entries in the record of rights prepared in accordance with the provisions of this chapter shall be presumed to be true until the contrary is proved . . . but no such entry or decision shall affect the right of any person to claim and establish in the civil court any interest in land which requires to be recorded in the registers prescribed in clauses (a) to (d) of section 32.”

Under section 32 of the same Act—

“ There shall be a record of rights for each mahal, or, if a mahal consists of two or more villages or portions of villages, the record may be prepared for each such village or portion separately.”

The record of rights shall include the following registers:—

(a) refers to register of all the proprietors in the mahal, including the proprietors of specific areas, specifying the nature and extent of the interest of each in Agra; (b) refers to all under-proprietary co-sharers in Oudh; (c) refers to register of all other under-proprietors in a mahal in Oudh; and (d) refers to register of all persons holding land revenue-free, specifying the nature and extent of the interest of each. Section 57 has to be read with section 32. If the name is recorded in the revenue register there ought to be strong presumption that the man whose name is recorded is the proprietor. What I want my amendment to secure is that (1) there ought to be some finality in the decisions of the revenue courts, (2) titles of third parties should not be drawn into controversy, (3) Government should not suffer in court fee, (4) unnecessary litigation should be discouraged.

Hon'ble Sir Sam O'Donnell: The main point of Khan Bahadur Hafiz Hidayat Husain appears to be this. A person transfers occupancy rights to a tenant. Then the tenant applies to the court. Then some claimant comes forward and says: “He has no right to give those rights; I am the landlord.” Then the issue is sent to the civil court; an issue, he says, involving many lakhs of rupees is thus decided on an application. The same thing, however, may happen under the existing Act or under other provisions of this Bill. Suppose a landlord sues a tenant for rent, and a third party comes in and says: “I claim to be impleaded; I am the landlord; he is not the landlord; the rent is due to me.” Then the issue is referred to the civil court. You cannot avoid raising questions of title in this indirect manner in the revenue court. That is the point which the honourable member seems to have entirely overlooked. We have not made any change in this respect.

Hon'ble the President: Before such an issue is remitted to the civil court the revenue court will satisfy itself whether such contention is valid or not.

Hon'ble Sir Sam O'Donnell : Our intention is that if the issue is raised it should go to the civil court. Perhaps we have not made the section clear.

Hon'ble the President : If the court is not satisfied, then it may go to the civil court ?

Hon'ble Sir Sam O'Donnell : Our intention is that if the issue is definitely raised the question will go to the civil court.

Exactly the same thing will happen under section 193 and other sections of the existing Act. You cannot prevent questions of title being raised in this indirect manner. Of course when they are raised in that manner and the issue is referred to the civil court, the decision is binding on the persons who are impleaded, but not on other persons.

Lastly, Khan Bahadur Hafiz Hidayat Husain said that under section 57 read with section 32 there was a presumption that the entries in the khewat are true. I think he is mistaken. Section 57 refers to the record of rights made at settlement ; it does not refer to the annual registers. We do our best to keep the annual records correct, but there are no doubt many mistakes. Our whole point in short is this. We wish the tenant to be able to establish his right to be an occupancy tenant for which he has paid money as quickly as possible under the amendment. What may happen is this. The tenant may be admitted to the holding. He may, thinking he is an occupancy tenant, spend money during the first two or three years. Then a civil suit is instituted and he finds that

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : May I rise to a point of order ? Such a position will never arise because section 115 of the Evidence Act will help the tenant.

Hon'ble Sir Sam O'Donnell : I do not see how it will help the tenant in the slightest degree. It is the third party who comes along and says that the man who purported to give the right had absolutely no title whatever, and if that is found to be correct by the court, then the occupancy tenant will have lost all his money and all the capital he has invested and will be a heavy loser.

Khan Bahadur Maulvi Fasih-ud-din : May I know one thing ? Will the court under the provisions of this law send the case *ipso facto* to the civil court or only after satisfying itself that there are good grounds for sending it ?

Hon'ble Sir Sam O'Donnell : The wording is not clear. The intention was that once an issue was definitely raised as regards title it must be sent to the civil court.

Hon'ble the President : That is, the revenue court will no longer remain the forum directly an issue of title is raised and the revenue court will not form even a *prima facie* opinion.

Hon'ble Sir Sam O'Donnell : If an issue of title is raised, then it must go to the civil court. The section is not quite clear, but if we are given two or three minutes we could make it clear.

The Council then adjourned for lunch.

After the recess—

Hon'ble Sir Sam O'Donnell: We have been engaged in drafting a revised amendment, which I think will meet with the wishes of the Council generally, but it is not quite ready yet. It is rather difficult to get the wording exactly right, and I would ask you therefore to postpone the consideration of this amendment so as to enable us to complete the preparation of it. Meanwhile we can pass on to another amendment; I think this course will meet with the convenience of all sections of the Council.

The consideration of the amendment was accordingly postponed.

CLAUSE 19.

Statutory tenants. 19. Every person who—

- (a) is at the commencement of this Act a tenant of land other than *sir, grove-land, pasture-land or land covered by water and used for the purpose of growing singhara or other similar produce*, not being a permanent tenure-holder or a tenant with a right of occupancy, or
- (b) is after the commencement of this Act admitted as tenant without a right of occupancy to land other than *sir, grove-land, pasture-land or land covered by water and used for the purpose of growing singhara or other similar produce*, or
- (c) is after the commencement of this Act admitted by a permanent tenure-holder or a fixed-rate tenant to the cultivation of land in his holding other than *grove-land, pasture-land or land covered by water and used for the purpose of growing singhara or other similar produce*,

shall be called a statutory tenant and, subject to the provisions of this Act, shall be entitled to a life-tenancy of his holding:

Provided, first, that no statutory rights shall accrue in favour of a sub-tenant and that no sub-tenant shall be deemed a statutory tenant:

Provided, secondly, that no statutory rights shall accrue in any land acquired or held for a public purpose or a work of public utility, and in particular, and without prejudice to the generality of this proviso, statutory rights shall not accrue in—

- (a) lands at present or which may hereafter be set apart for military encamping grounds;
- (b) lands situated within the limits of any cantonment,
- (c) lands included within railway boundaries;
- (d) lands acquired by a town improvement trust in accordance with a scheme sanctioned under section 42 of the United Provinces Town Improvement Act, 1919;
- (e) lands within the boundaries of any Government forest;
- (f) lands appurtenant to any jail.

Hon'ble Sir Sam O'Donnell: I beg to move that the words "or a tenant holding from a permanent tenure-holder or a fixed-rate tenant" be added after the words "occupancy" in the last line of sub-clause (a).

The reason for the amendment is that a tenant holding from a permanent tenure-holder or a fixed-rate tenant is not a sub-tenant in view of the definition in clause 3(7), and by the wording of sub-clause (a) of clause 19 a tenant holding from a permanent tenure-holder or a fixed-rate tenant becomes a statutory tenant. It is not intended that a tenant holding at the commencement of the Act from a permanent tenure-holder or

a fixed-rate tenant should become a statutory tenant. The intention is that only such of these tenants as are admitted after the commencement of the Act should become statutory tenants under clause 19(c), and it is in order to make this position clear that I have moved the amendment.

Question that the words "or a tenant holding from a permanent tenure-holder or a fixed-rate tenant" be added put and agreed to.

Pandit Govind Ballabh Pant : I beg to move that the words "or land covered by water and used for the purpose of growing *singhara* or other similar produce" be omitted from clauses (a), (b) and (c).

About ten years ago I had a case before the then Member of the Board of Revenue, Sir John Campbell, in which the question involved was this, whether occupancy rights do or do not arise in the land used for growing *singhara*. In that case I appeared for the landlord, who said that such rights should not arise, but the Board of Revenue held that they do and they ought to. So I am asking the Government to stand by the then Member of the Board of Revenue by omitting the words I have proposed.

Hon'ble Sir Sam O'Donnell : It is really a minor matter because I do not think that the area in question is at all a large one. But the view taken in the 1924 committee and subsequently in the select committee was that such land comes under the head of casual or occasional cultivation. The land is generally let on special terms for short periods. Very often there is no water at all on such land, so that *singhara* cannot be grown, and consequently it is taken by the tenants only for short periods. It seems to me that there is no hardship on the tenant if this land is excluded. At the same time I do not wish to be understood to mean that if Pandit Govind Ballabh Pant's amendment is carried, it will matter much. I do not think the area concerned is large. On the whole, however, it seems to be better to stick to the present wording of the clause.

Pandit Govind Ballabh Pant : I would now consider it a serious matter either if my amendment is not accepted.

Amendment by leave withdrawn.

Babu Sangam Lal : I move that in sub-clause (c) of clause 19 the words "or a fixed-rate tenant" be omitted. This is a drastic change which has been introduced into this sub-clause and there does not appear to be any strong justification for it. A fixed-rate tenant has so far been defined as a tenant with a right of occupancy at a fixed rate. The result of the change will be that he is turned from a tenant into an under-proprietor. The only reason given for this change in the report of the Drafting Committee of 1924 is that sub-letting is widespread amongst fixed-rate tenants in the Benares division. But, Sir, my information is that land to the extent of 20 to 25 per cent. alone is sub-let and that 90 per cent. of fixed-rate tenants do not hold more than eight or ten bighas. This is not such a serious matter that this drastic change should be made. The effect of this change is that while a fixed-rate tenant has been changed into an under-proprietor, he has not been given the privileges of a permanent tenure-holder. Zamindars have been given extensive rights of ~~the~~ extensive land for cultivation, but the fixed-rate tenant has not been given an inch of land for self-cultivation. The result of the sub-clause, if passed,

[Babu Sangam Lal.]

will be that if even an inch of land is sub-let the sub-tenant will be converted into a statutory tenant. If fixed-rate tenants had held 200 or 300 bighas or even 50 bighas I would not have been averse to the proposal. Then they might have been placed in the position of small proprietors, and under clause 4 as we have passed it a small proprietor if he has 30 acres will have half of his land as *sir*. This privilege has not been extended to fixed-rate tenants, though it has been extended to permanent tenure-holders. The position of both is the same, and I do not think that there should be any distinction. So far they have been treated as tenants, and there is no justification why they should be turned into under-proprietors. They are being deprived of a valuable right for which no compensation has been given as has been done in the case of zamindars and landlords. Besides this, if you want to put a stop to sub-letting, you should place them at the most in the position of occupancy tenant so that they may be able to sub-let for five years, cultivate for five years and then again sub-let for five years. Look at it from whatever point of view you may, there is no justification that this drastic change should be made. In fact the President of the 1924 committee—Sir Salwyn Fremantle—was against this. With these words I move this amendment.

Rai Bahadur Thakur Hanuman Singh : I rise to support the amendment which has been moved by my friend Babu Sangam Lal. I agree with him in what he said in his speech in support of the amendment excepting that the same rights of sub-letting should be given to the fixed-rate tenants as are given under this Bill to the occupancy tenants. The unconditional right of sub-letting has been enjoyed by the fixed-rate tenants since the creation of fixed-rate tenancy. There is no reason why the present Bill should snatch away those rights. Fixed-rate tenants exist only in the permanently settled districts, and their number is not very large. The area held by them varies from a bigha to 50 bighas. Very few only have more than this. They are increasing in number and their holdings are being divided among their descendants. I am sure that very soon the area held by each of them will considerably decrease as their number will increase. Then they are poor people. They cannot always live upon the cultivation of these holdings. They have to take land from landlords and even sometimes from occupancy or other tenants as sub-tenants. If the right of sub-letting is taken away from them their position will be unenviable. This is a new thing which has been introduced in the Bill and I hope the honourable members of this Council will please see their way to disallow it. In section 27 the word "sub-letting" in connexion with the fixed-rate tenants has been used. It may be an omission, or it may be due to justice in the heart of the framers of the Bill. I hope that the amendment moved will be allowed by the House, which will be a great justice to the fixed-rate tenants.

Raja Sri Krishna Dutt Dube : I rise to support the amendment of my friend Babu Sangam Lal. The fixed-rate tenants have not got more than 25 bighas of land on an average in the Benares division. I as a zamindar as well as a fixed-rate tenant have got personal experience of this sort of tenancy. If the fixed-rate tenants could sub-let their land and their sub-tenants become life-tenants, then it would not leave the fixed-rate tenant any sort of interest in the land. At the same time in course of time they

will become very poor, because they will get only the revenue and will have no hold on the land.

The House must be astonished to see that the other day I was speaking in favour of life-tenants, but today in the special circumstances I am against it, because if they will consider the case carefully they will find out what difficulties and anxieties the fixed-rate tenants would feel if the Bill is passed as it stands. I hope that the honourable members of the House will omit this clause from the Bill, because it is not very beneficent to the fixed-rate tenants.

The second point is that if the sub-tenants will get the rights of life-tenants, no land will be left for them for cultivation or *sir* at all.

With these few words I would again request the House to have some mercy on the fixed-rate tenants and relieve them of this pain under which they are labouring at present.

Pandit Sri Krishna Dutt Paliwal: As a similar amendment stands in my name I rise to support the amendment of my friend Babu Sangam Lal. I think a great wrong is being done to the class of tenants known as fixed-rate tenants by including them in this sub-section. Their financial position, their very livelihood is being threatened. The framers of the Bill in their enthusiasm to stop the evil of sub-letting have not taken account of the special circumstances in which these fixed-rate tenants are placed. It seems, Sir, that they forgot that generally most of the fixed-rate tenants are high-caste Hindus, for whom the caste rules prohibit the tilling of the soil. Hence the conferring of status of life-tenants to their sub-tenants is tantamount to penalizing them for their religious beliefs. In fact, if we look to the special circumstances in which the fixed-rate tenants are placed we find that to include them under this section is to penalize them for their religious beliefs and to punish them for their misfortunes and economic conditions. The fixed-rate tenants are confined to six districts—Ballia, Jaunpur, Benares, Ghazipur, Mirzapur and Azamgarh. The economic conditions in these districts are quite different from what they are here. The economic condition of agricultural labourers in these districts is better than those of their brethren in other districts of the province. The result is that the mode of hiring labour is also quite different. The peasants who need the labour of others have to sub-let a portion of their land to those whose labour they seek in order to induce them to work. They do this by sub-letting to them a portion of their land at very substantial concessions, and hence if these sub-tenants are allowed to acquire the status of life-tenants, they will be allowed land at extremely low rates and the fixed-rate tenants will suffer heavily. Besides their religious belief, their misfortunes, such as death in case they leave a minor behind, their blindness, their long sickness or economic conditions, compel them to sub-let their holding. But once they sub-let their holding they are doomed. They meet with the same fate if they resort to usufructuary mortgages which they have been doing up till now in hard times. Hence we find that the inclusion of fixed-rate tenants in this sub-clause is a great injustice done to them, and I hope the House will not allow such an injustice to be done simply because their case has not been ably or adequately advocated. My appeal to the House is, let the fixed-rate tenants not suffer because they have not been able to represent their case fairly well, let them not suffer for no fault of theirs, let them not be condemned unheard, let them not be condemned for their misfortunes or for their religious beliefs.

[Pandit Sri Krishna Dutt Paliwal.]

With these few words I commend the motion for the acceptance of the House.

Hon'ble Sir Sam O'Donnell : The reason for including statutory tenants in this clause is given in the report of the 1924 committee. The question whether the sub-tenants of fixed-rate tenants should be admitted to statutory rights was discussed. It was agreed that the evil of sub-letting was widespread in the permanently settled districts. It was pointed out that the fixed-rate tenant was practically an under-proprietor and that there was really no reason why a person holding for him should not be treated as an ordinary tenant-in-chief. Now, Sir, there is no question that sub-letting by fixed-rate tenants is widespread—not merely casual or temporary sub-letting, but continuous sub-letting. The position of a fixed-rate tenant is essentially that of an under-proprietor. His interest is permanent, heritable and transferable. The rent which he pays cannot be varied, and it is out of all proportion to the letting value of the land. In other clauses of the Bill we have recognized his position as an under-proprietor. We have provided that he cannot be ejected for arrears of rents nor for any act detrimental to his holding. His position is thus that of a full proprietor except in one respect, namely, that he cannot acquire *sir*. We are not suggesting that the clause should apply to sub-tenants who are at present holding land. It will only apply to tenants who will in future be admitted by fixed-rate tenants. It has been said that the fixed-rate tenants must sub-let their land because they cannot otherwise arrange for its cultivation. I do not believe that that is the case. In these eastern districts the number of labourers is very large. These are the districts from which there is a large emigration and the fixed-rate tenant therefore should have no difficulty in arranging for getting labourers to cultivate his land if he cannot do so himself. It seems to us, therefore, that for these reasons this provision in the Bill is a reasonable one.

Lieut. Raja Durga Narayan Singh : I regret, Sir, that the Hon'ble the Finance Member has forgotten that the concession of sub-letting has been allowed to occupancy tenants and zamindars who hold *sir* area, but these small fixed-rate tenants are debarred from sub-letting their holdings, and if they do so in any case, then the right of life-tenancy will accrue in their tenancy. Circumstances will arise when a minor, an idiot, a female or a person who is in Government service or a person who is residing out of his district will be compelled to sub-let his holding. I am sorry, Sir, no concession for them has been granted in this Bill, because their claims were not well represented. I am sorry to note that the Government wants to take bad advantage of this. I have on more than one occasion informed the Government and the members of the select committee that I have got hundreds of letters from the eastern districts intimating the grievances of fixed-rate tenants that the right of life-tenancy should not accrue in their holdings when they sub-let them. But here I find a quite different attitude of the Government benches. My friend Babu Sangam Lal has pointed out that the area sub-let by the fixed-rate tenants is very small. They sub-let only on very hard occasions such as when there is an epidemic in the district or if there is any financial difficulty. They would not do so otherwise as they want land for their own cultivation without which they cannot maintain themselves. With these words I commend this motion to the House.

Khan Bahadur Maulvi Fasih-ud-din : As a member of the two committees which passed this provision of the Bill I think I am in duty bound to have my say on this subject. I would submit that the arguments which have been used by several of the members against the evils and rigours of sub-letting can be used appropriately in the case of the zamindars also. We know that the world is round, and if a man goes astray and goes in the opposite direction, he will ultimately come back to the same point from which he started. I was rather amused when I heard some of my friends, and specially the honourable member from Allahabad, saying that it would be very hard on these fixed-rate tenants to allow any man who cultivates his fields even for months to become a life-tenant in that field. Another gentleman said that there were other grounds, chiefly religious, which would lead these fixed-rate tenants to sub-let their lands. The same could be said with equal appropriateness in the case of the zamindars and the same kind of arguments could be advanced. I do not find that any fresh arguments have been advanced in this case except that these fixed-rate tenants are tenants and not zamindars. The honourable member for Allahabad has said that the area occupied by these fixed-rate tenants is small. I submit, Sir, that it may be small as compared to the total area of the province, but it is not small in the few districts in which these fixed-rate tenants do exist.

Rai Bahadur Thakur Hanuman Singh : It is very small.

Khan Bahadur Maulvi Fasih-ud-din : No. That is my personal experience. I have been in some of these districts for four or five years and I do contend that the area of these fixed-rate tenants is not small in those districts in which they happen to be and our friends have not given any figures to show that the area is really small. In fact, my own opinion is that these fixed-rate tenants almost swamp the area, at least in Jaunpur, where I was for about three years. Let us analyze the position of these fixed-rate tenants. As the Hon'ble the Finance Member has said, these fixed-rate tenants are really the proprietors except in the sense that they cannot acquire *sir*. Their tenancy is saleable, and the result of this power to sell that has been given to the fixed-rate tenant is that most of these fixed-rate tenancies have passed into the hands of the capitalists and, if I am not mistaken, my own impression is that most of these fixed-rate tenants are not hereditary fixed-rate tenants, but chiefly those who have purchased those tenancies. The Raja Sahib of Jaunpur, who has opposed this provision of the Bill, has himself confessed that he is a fixed-rate tenant, and if gentlemen of his kind are fixed-rate tenants, I believe there are several others who hold almost the same position as the Raja Sahib of Jaunpur who are fixed rate tenants. In fact, in some of the villages that I have come across the chief complaint of the zamindar was that these fixed-rate tenants were the real zamindars, because they were better off than the zamindar both in wealth and influence. I noticed also that while a fixed-rate tenant was paying eight annas a bigha to the zamindar, he was realizing about eight to ten rupees a bigha from his sub-tenant. I notice that a good deal of rack-renting was going on, and the rack-renting was so much that I never came across in any of the districts of these provinces. In fact, if we are to prevent the evils of rack-renting, if we are to improve the lot of these so-called sub-tenants who are the real cultivators of the land and to protect them from the evils of rack-renting, it is but necessary that the sub-tenants should be treated as life-tenants.

[Khan Bahadur Maulvi Fasih-ud-din.]

They are just as good tenants-in-chief as the tenants-in-chief in the Agra province, and there is no reason why we should not have mercy over them, why we should not have a corner in our heart for these so many innumerable wretched fellows who are paying such exorbitant rates of rent, and I think it were these reasons that compelled all the members of the two committees that we held to agree to this scheme of life-tenancy. We should remember that by not extending this privilege to the sub-tenants of these fixed-rate tenants we will not be benefiting the fixed-rate tenants so much as we will be crushing these hundreds and thousands of rack-rented sub-tenants who really till the land and who actually produce crop with the sweat of their brow. So it was in order to benefit these actual cultivators of the soil, in order to place them on the same footing as the tenants of the other districts of the Agra province are placed, in order to prevent them from being a prey to the clutches of these money-lenders and capitalists, that we agreed to this scheme of making these sub-tenants as life-tenants. With these remarks I support the existing provision of the Bill.

Pandit Govind Ballabh Pant: Our attitude in respect of this provision was clearly stated in paragraph 14 of our minute of dissent. We stated therein that we hold the view that the cultivating ryot, the man who actually tills the soil, should be protected from rack-renting and from frivolous ejectment. That principle is applicable, so far as we are concerned, to all classes of super and under-proprietors, whether they be called fixed-rate tenants, zamindars, permanent tenure-holders or otherwise. I regard the fixed-rate tenants as a class of zamindars, and with that explanation I think I should be in a way disabusing the notions of many here as to the actual reasons why I stand up to support the amendment moved by my honourable friend the member for Allahabad. I will just briefly specify them and I hope they will satisfy the House.

Firstly, I do not see eye to eye with the interpretation that has been placed on this clause by the Government. I do not think that this clause would necessarily mean that the present tenants would not acquire statutory rights. What is the present state of things? Only sub-tenants are holding land from fixed-rate tenants. Those sub-tenants have got only an annual right of possession in land. Every time the year expires, they are re-admitted to the cultivation of the holding by the fixed-rate tenants. That is my interpretation of the law. I hold that where a fixed-rate tenant admits a sub-tenant to his holding and does not eject him after the expiry of the year during which he has been in possession, he, by his conduct if not by express agreement, re-admits him to the holding at the end of that year, for he has got only an annual tenancy in the land and with the expiry of the agricultural year his right to remain in possession comes to an end; and if he remains in possession of that land after that year, then he is re-admitted to the possession and to the cultivation of the land. So with this interpretation before me I hold that clause (c) means that every person who is at present holding land from a fixed-rate tenant, if allowed to continue in possession of that land after the expiry of the year in which this Bill becomes an Act, will thereby acquire the right of a statutory tenant in the land to which he is admitted by this conduct of his landlord as a tenant. Apart from that, whether the interpretation that I am giving be or be not quite satisfactory,

I am not satisfied on the data before us that there is sufficient ground for imposing the statutory tenure on the holdings of fixed-rate tenants. At the outset I would refer to a grave omission in this Bill. While it is proposed that fixed-rate tenancy should be encumbered with statutory rights, there is no provision for demarcating the demesne of the fixed-rate tenant. I hold that in the case of every person who cultivates land and owns it there may be occasions when he cannot himself cultivate it; there may be occasions when he has to sub-let it to others. But if you make a provision of this character that that man will have no protection in respect of any inch of land and the moment he lets out any bit of land it will become the life-tenancy of the man to whom he lets it, without setting apart any portion for his real use, that seems to be a very stringent method of dealing with him. Then, as honourable members already know full well, they have not got any *sir* so far and there is no provision in the Bill even to the effect that the *khudkasht* which they have at present will become their *sir* hereafter or that it will be free from statutory rights if it is let out hereafter. It may be urged that they have had no *sir* so far, but I see no reason in case you want to treat them just like other landholders, why there should not there be a provision in the Act to this effect that the *khudkasht* land which is in the possession of the fixed-rate tenants at present will become their *sir* or will not be liable to be encumbered with statutory rights hereafter. Their lands have not so far been the subject of occupancy tenure, and to encumber them at once with statutory rights while not giving them any sort of protection is unintelligible. There is no safeguard in this clause even in respect of minors, females or idiots whose lands cannot possibly be cultivated by themselves. Is a minor or a female whose land is cultivated by a sub-tenant to lose all his or her rights therein the moment it is sub-let to another person? Suppose a fixed-rate tenant dies and leaves a minor son after him, necessarily the land should be cultivated by some person other than the tenant himself. Should that person who cultivates the land acquire statutory rights in that area the sub-letting of which is not a matter of choice with the fixed-rate tenant but is a matter of necessity? Then again, nobody here has given us any figures. It is said that this land is being sub-let to a very large extent; it is said that it is being used for purposes of rack-renting. I for one assure the House that if that be the fact, then I want that some sort of safeguard should be devised in order to protect the man who really does all the labour and on whose toil we all live; but as there are no facts and figures before us I am not prepared to accept the *obiter dicta* of the Hon'ble the Finance Member or anybody else. What are the figures? Has he told us what is the area of the average holding? Has he told us what is the total number of fixed-rate tenants? Has he told us what is the average length of time for which these lands are given on lease? Has he told us what is the rent that is being actually realized? As you may have noticed from the returns, the area of *sir* and *khudkasht* in the Benares division is larger than that of the fixed-rate tenants, and such area can be and is freely sub-let. When we are extending that privilege by means of the addition of the *khudkasht* area to *sir* area and the further provision in clause (e), it seems to me a very one-sided affair to burden this class of petty holders with this statutory tenure, while giving them no corresponding privileges whatsoever. Mr. Sangam Lal tells me (and his information is derived from a very responsible quarter) that 90 per cent. of the holdings are not of more than about ten bighas in

[Pandit Govind Ballabh Pant.]

area, and I and also told that more than 20 or 25 percent. of these holdings have never been sub-let. Now, I ask the House with all this before us whether you are satisfied that there is sub-letting and rack-renting and the fixed-rate tenant has too much to spare for others? I would have no sympathy with this or any other class of tenant because of his name if he abused his privileges, but with the material before us I am satisfied he is not doing so, and with this conviction I would advise the House to accept the amendment of Babu Sangam Lal.

Mr. H. David : I belong to a district which is called permanently settled, and I know the position of these fixed-rate tenants. They are, I should say, between the devil and the deep sea. On one side I find the zamindars of the village are very anxious to buy up their rights. And in this, as I find, very courageously or frankly the Raja Sahib of Jaunpur has offered an instance. I know for a fact in Mirzapur district a large number of zamindars are very anxious to buy up fixed-rate tenancies, and to pay a very good price for them also. I find that day by day these tenants are growing poorer and a tenancy is being divided amongst their heirs, and the quantity of land in possession of each tenant grows smaller and smaller every day. Sir, what is a fixed-rate tenant? He is after all a tenant and nothing more. He had the good fortune of having the rent fixed from the date of what I may call the permanent settlement. That is all. And why should such a tenant be deprived of the right of sub-letting under various circumstances? A fixed-rate tenant may die and leave a minor son or a fixed-rate tenant may be a lunatic or infirm, and why should he, under these circumstances, not be allowed to sub-let his holding? Why should his position be reduced to lower than the position accorded to occupancy tenants? I find under the Bill even occupancy tenants can sub-let their holdings for a certain period without giving rise to statutory tenancy. If this is the case, why should not the same facility be granted to these fixed-rate tenants? They have, no doubt, the satisfaction that their rent cannot be increased, but why reduce them to a lower position than that of occupancy tenants? I whole-heartedly support the amendment put forward by Babu Sangam Lal.

Babu Sangam Lal : I need not reply to the various points raised by the Hon'ble the Finance Member as they have been replied to by my honourable friend from Naini Tal. But I would like to make one thing clear. Khan Bahadur Maulvi Fasih-ud-din appeared to think that I looked at the zamindars from one point of view, while I had a different standard for fixed-rate tenants. I made it very clear that if the evil of rack-renting is very prevalent, then some check should be placed, and if he will refer to my amendment 490 he will find that I have placed him in the same position in which occupancy tenants are. Therefore so far as that goes he cannot possibly have that grievance against me. So if the Government convince the House that the evil of rack-renting is very prevalent and is widespread, then in order to prevent that I have already tabled an amendment; but since then I have got certain figures which we shall consider when we come to consider clause 29. Therefore I am as much against rack-renting as my friend from Budaun. We want that the actual tenant who really cultivates the soil should get the benefit of it and not the middleman, by whatever name you may call him.

Hon'ble Sir Sam O'Donnell: I am afraid I cannot agree with Pandit Govind Ballabh Pant on the legal point which he raised. In his view the words "admitted by a fixed-rate tenant to the cultivation of the land" are equivalent to the words "allowed to continue in possession of the land." I do not think that that is a correct interpretation. I think the words "admitted after the commencement of the Act" do not refer to the case of a sub-tenant who was cultivating the land before the Act and is merely allowed to go on cultivating it. Pandit Govind Ballabh Pant and I think one or two other honourable members referred to the case of minors, females, idiots and lunatics. I do not think we need take very seriously the question of idiots and lunatics. I hope there are not many fixed-rate tenants who are idiots or lunatics. But so far as this point is concerned I personally would have no objection to inserting after fixed-rate tenants "other than the persons specified in section 29(6)." So far as the other points are concerned I remain unconvinced. It is quite true that the fixed-rate tenant cannot acquire *sir*. *Sir* is the appanage of full proprietary rights. On the other hand we have made provision for the requisition of *khudkashit* by him. As I pointed out before, these tenants live in districts where labour is abundantly easy. They can either cultivate with their own hands or by hired labour. The fact is of course that a large number of these fixed-rate tenancies are simply small zamindari which are freely bought, and the tenants of these holdings sub-let continuously. I cannot give up-to-date figures, but some years ago I obtained figures for 1919-20. It appeared that 238,000 acres were sub-let. I think we can take it that that area is practically continuously sub-let. I cannot give figures as regards the number of fixed-rate tenants, nor as regards the extent of the holdings. I am told, however, that the figure of ten bighas is merely a conjectural estimate of the average area of the holdings.

Pandit Govind Ballabh Pant: What did you give as the figure?

Hon'ble Sir Sam O'Donnell: 238,000 acres.

Pandit Govind Ballabh Pant: That will come to about 12 per cent.

Hon'ble Sir Sam O'Donnell: That will come to much more; it will come to one-third.

I think you may take it that practically the whole of that area is sub-let. The fact is, as I said, when a fixed-rate tenant is actually the cultivating tenant there is no difficulty; but if he is not such he is really an under-proprietor, and he is recognized as such in the various provisions which we have included in the Bill. When we extended the Bundelkhand Land Alienation Act and the Encumbered Estates Act to South Mirzapur where fixed-rate tenants are found in large numbers, we included fixed-rate tenants as under-proprietors. We recognized that they were practically under-proprietors. For these reasons I remain unconvinced, and I adhere to the view already expressed.

Mr. H. David: Why don't you give the same rights as you give to the occupancy tenants?

Hon'ble the President: Does the Hon'ble the Finance Member propose to move that amendment?

Hon'ble Sir Sam O'Donnell: If there is a desire that it should be moved.

Honourable members : Yes, yes.

Hon'ble Sir Sam O'Donnell : I beg to move that after the words " or a fixed-rate tenant " the words " other than a fixed-rate tenant who belongs to the classes described in section 29(6) " be inserted.

Pandit Govind Ballabh Pant : I want to put a question to the Hon'ble the Finance Member whether he is agreeable to a clause being added to the effect that all the lands that may be under the cultivation of fixed-rate tenants at the time this Act is passed will be exempted from the provisions relating to statutory tenants.

Hon'ble Sir Sam O'Donnell : I think there will be difficulties about that.

Hon'ble the President : I think we are doing the work of the select committee in the open Council. It is against parliamentary practice to do the work of select committee in the open Council. But as we are engaged in the consideration of a complex and complicated measure I am allowing it as a special case. Honourable members must remember that this sort of conversation and this sort of work must be done and ought to have been done in the select committee and not in the open Council. If there is any weakness in the constitution and if the whole House ought to go into committee we ought to say so, we ought to press for it. But as long as the select committee is elected by the House, this sort of work should not be done in the open Council.

Now, an amendment has been moved by the Hon'ble the Finance Member to the words in the Bill. I wish to put that to the House first.

Question that after the words " or a fixed-rate tenant " the words " other than a fixed-rate tenant of the classes described in section 29(6) " be inserted put and agreed to.

Question put that the words " or a fixed-rate tenant other than a fixed-rate tenant of the classes described in section 29(6) " stand part of the Bill.

The House divided : Ayes, 41 ; Noes, 43.

Ayes.

Hon'ble Sir Sam O'Donnell.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.

Hon'ble Rai Rajeshwar Bali.

Hon'ble Thakur Rajendra Singh.

Hon'ble Nawab Muhammad Yusuf.

Mr. G. B. Lambert.

Mr. E. A. H. Blunt.

Kunwar Jagdish Prasad.

Sir Ivo Elliott.

Mr. P. H. Tillard.

Mr. H. A. Lane.

Mr. R. L. Yeake.

Mr. R. Burn.

Mr. A. W. Pim.

Mr. E. J. K. Hallows.

Mr. E. L. Norton.

Mr. H. G. Billson.

Mr. R. J. S. Dodd.

Colonel A. W. R. Oochrane.

Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenroder.

Raja Muhammad E'jaz Rasul Khan.

Mr. H. C. Desanges.

Babu Khem Chand.

Lala Kishan Lal.

Rai Sahib Chaudhri Sheoraj Singh.

Lala Babu Lal.

Thakur Rajkumar Singh.

Rai Bahadur Babu Ram Nath Bhargava.

Lala Dhakan Lal.

Rao Sahib Kunwar Sardar Singh.

Rai Bahadur Pandit Balbhadra Prasad Tiwari.

Maulvi Shahab-ud-din.

Khan Bahadur Hafiz Hidayat Husain.

Khan Bahadur Shaikh Masud-us-Zaman.

Maulvi Abdul Hakim.

Khan Bahadur Maulvi Fasih-ud-din.

Khan Bahadur Maulvi Muhammad Fasi-

ur-Rahman Khan.

Raja Jagannath Baksh Singh.

Mr. E. M. Souter.

Mr. Tracey Gavin Jones.

Noes.

Mr. H. David.
 Babu Narayan Prasad Arora.
 Babu Sangam Lal.
 Babu Mohan Lal Saksena.
 Babu Damodar Das.
 Babu Bhagwati Sahai Bedar.
 Thakur Manjit Singh Rathor.
 Pandit Brijnandan Prasad Misra.
 Pandit Bhagwat Narayan Bhargava.
 Pandit Jhanni Lal Pande.
 Thakur Har Prasad Singh.
 Thakur Keshava Chandra Singh Chaudhri.
 Lieut. Raja Durga Narayan Singh.
 Pandit Sri Krishna Dutt Paliwal.
 Babu Parsidh Narayan Anad.
 Pandit Yajna Narayan Upadhyaya.
 Raja Sri Krishna Dutt Dube.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 2nd Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
 Pandit Govind Ballabh Pant.
 Pandit Hargovind Pant.

Rai Jagdish Prasad Sahib.
 Chaudhri Jaswant Singh.
 Pandit Nanak Chand
 Thakur Shiva Narayan Singh.
 Raja Suryopal Singh.
 Babu Nemi Saran.
 Thakur Sadho Singh.
 Mr. Mukandi Lal
 Dr. Jaikaran Nath Misra.
 Rai Bahadur Thakur Mashal Singh.
 Mr. Muhammad Aslam Saifi.
 Rao Sahib Abdul Hamid Khan.
 Khan Bahadur Chaudhri Amir Hasan.
 Khan.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Munshi Siddiq Ahmad.
 Raja Saiyid Ahmad Ali Khan Alvi.
 Rai Bahadur Lala Mathura Prasad Mohrotra.
 Raja Shambhu Dayal.
 Lieut. Raja Shaikh Imtiaz Rasul Khan.

CLAUSE 3 (7).

Hon'ble the President: Before we go to the first proviso honourable members will notice that the word "sub-tenant" occurs there twice. Honourable members will also remember when we were discussing the definition of the word "sub-tenant" we agreed to postpone it till we come to clause 19. It appears to me that we must fix up our ideas as to what actually the "sub-tenant" means before we take up this proviso. If this be agreed to we may revert to the definition of the word "sub-tenant."

We are now discussing clause 3 (7), the definition of the word "sub-tenant".

Babu Sangam Lal: I shall move the amendment. I am referring to amendment No. 453. I move that the words "or a fixed-rate tenant" be omitted. This is a consequential amendment.

Hon'ble the President: The amendment moved is that in clause 3, sub-clause (7), the words "or fixed-rate tenant" be deleted.

Question that the words "or fixed-rate tenant" stand part of sub-clause (7), clause 3, put and negative.

Hon'ble Sir Sam O'Donnell: Sir, may I point out that we made an amendment in clause 19 (a) on my own motion that the words "or a tenant holding from a permanent tenure-holder or a fixed-rate tenant" be added after the word "occupancy".

Hon'ble the President: That refers to "at the commencement of the Act" and (c) refers to "after the commencement of the Act."

The House has decided to omit the words "or a fixed-rate tenant" from 3 (7). The House has come to that decision. Whatever the legal effect of it may be the Legal Remembrancer will throw light later on and move consequential amendments, if necessary. For the present the House has come to a certain decision. What the cumulative effect of that decision is will be seen later on.

CLAUSE 19.

Babu Sangam Lal : I beg to move that (b) and (c) of the second proviso to clause 19 be omitted.

Hon'ble Sir Sam O'Donnell : On a point of order, Sir. I am advised that this amendment requires the previous sanction of the Governor General under section 80A of the Government of India Act. We have already referred the matter to them for orders, and I suggest that the discussion of the amendment be postponed.

Hon'ble the President : The Hon'ble the Finance Member has raised rather a ticklish question. I wish that previous notice of it had been given to me so that I may have given a considered opinion on the point. Off-hand I am inclined to say that when a Bill comes before the Council, the latter is at perfect liberty to make any amendment it desires. Later on, if His Excellency the Governor thinks that a certain amendment has been carried by the Council in the absence of the previous sanction of the Governor General having been obtained, he can, under the reservation of Bills Rules, reserve the Bill till the sanction of the Governor General has been obtained, if they are applicable. But as far as the Council is concerned, it is seised of the Bill as it is, and for that reason the consideration of this clause cannot be postponed. If it is on any other ground or if the Hon'ble the Finance Member wishes the consideration of the clause to be postponed without stating any grounds and without committing the Chair and the Council to any ground, he can do so.

Hon'ble Sir Sam O'Donnell : I suggest, Sir, that anyhow the consideration of this clause be postponed. I really do not know why Babu Sangam Lal wants to move this amendment. Railway land or cantonment land is not subject even to the present Act of 1901. In fact it has never been subject to any Tenancy Act, for the obvious reason that such land is administered by the Government of India. I hope the Council will agree that this amendment had better not be put forward.

Pandit Govind Ballabh Pant : So far as the particular clauses are concerned my friend Babu Sangam Lal may not be very particular about them and he may even withdraw them. I do wish, however, to urge upon your consideration, Sir, that whatever point of order is raised in this House it has to be decided by the Hon'ble the President and we are not concerned with the views of His Excellency the Governor General or His Excellency the Governor on that point of order.

Hon'ble Sir Sam O'Donnell : Nobody suggested that. I merely said that under the provisions of the Government of India Act the sanction of the Governor General was required. That was the advice that I had received. You have, Sir, given your views in the matter. It was never suggested that it was not for the President to decide the point of order.

Amendment by leave withdrawn.

Pandit Govind Ballabh Pant : I move that after "forest" in (c) of second proviso to clause 19 the semi-colon may be omitted and the words "except where such land has been held by a tenant continuously for seven years" be added. When I was reading this Bill I came across this clause which dealt with one of our old friends, the Government forests, and having seen that I was provoked into examining it with some care and

I found that all this class of land within the boundaries of every forest is to be exempted from the rule providing for the conferment of statutory rights. I agree that ordinarily land which lies within the boundaries of the Government forests should not be subject to such rights. But I know of cases in which land, which is technically within the Government forests, has been practically used for agricultural purposes for years and years. In fact I once put some questions making inquiries from Government if they were prepared to disforest certain areas which had been let out to tenants for a considerable length of time. The Government told me in reply that they were not. That is exactly the reason why I have put forward this amendment. I hold that when Government are introducing a law by virtue of which every tenant, who cultivates the land belonging to a zamindar which is not *sir* or *khudkasht*, acquires statutory rights the moment he takes it under his cultivation, there is no reason why land which simply by accident happens to be included within the boundaries of a forest should not be subject to statutory rights, when it is not in fact forest land but agricultural land. Honourable members will be pleased to notice the condition that I attach to my proviso. I want such land to be the subject of statutory rights only after it has been held by a tenant continuously for seven years. I hold that where Government lets out the land inside the Government forests continuously for seven years, that is a proof positive of the fact that land is fit and necessary for agricultural purposes, and being such there is no reason why the person who cultivates that land should not acquire the rights of a life tenant over it as obviously it is agricultural land. When it has already been used by him for seven years, by conferring statutory rights you are probably extending his period by a dozen years more. I propose that the land should not be the subject of statutory rights so long as it is not cultivated for seven years, but it should be so after it has been so cultivated.

Hon'ble Sir Sam O'Donnell: There are, I believe, few plots of land in the forest which are let otherwise than on annual leases. There may be some plots of land which have been let out for longer periods. But even in the case of such plots of land I think the Council will agree that statutory rights should not accrue. The honourable mover said that such land was agricultural land. It is not agricultural land; it is land that the Forest department let out because for the moment they do not require it either for the purpose of a plantation or for grazing. They may at any time find that the demand for grazing has increased or that the demand for timber has increased or that it is necessary to use it for the purpose of planting and generally for the development of forests, and if statutory rights were granted in such cases, it would be necessary to buy out the tenant which would simply mean a loss to the public. After all, forests are public property and the public are interested in their management and in their income. It is not desirable that loss should be inflicted on the public revenues. I cannot see that the tenants have any grievance whatsoever in a matter of this kind. They know quite well that forest land is quite different from ordinary agricultural land. I hope, therefore, that the Council would not accept this amendment.

Pandit Govind Ballabh Pant: The Hon'ble the Finance Member has said that he does not accept that this is agricultural land. I hold that land which is used for the purposes of agriculture continuously for a period of seven years is or becomes agricultural land, even if it were not so before

[Pandit Govind Ballabh Pant.]

the period of seven years commenced. Then he says that it may be required for the purposes of plantation or other purposes connected with the forest. Well, there is the clause about acquisition of which the Government could take advantage, pay compensation to the tenant and acquire the land if the Government needs it. There is, besides, the Land Acquisition Act and the Forest Act which they can apply. So I am sorry I am not satisfied by the reply of the Hon'ble the Finance Member and I press my amendment.

Hon'ble Sir Sam O'Donnell: Of course the land inside forests which is let at any time for agricultural purposes may in one sense of the term be said to be agricultural land. When I said it was not agricultural land I meant that it stood on an entirely different footing from the agricultural land included in the villages outside the forests. I meant it was essentially part of the forest. For the moment the Forest department may not find it convenient to use that land for forest purposes but at any time they may require it and it seems to me undesirable that if they do require it they should have to pay compensation. That would not be in the interest of the tenants on whose behalf the Government is managing these forests.

Question put, that the words "except where such land has been held by a tenant continuously for seven years" be added.

The House divided : Ayes, 36 ; Noes, 49.

Ayes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Damodar Das.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Pandit Jhanni Lal Pande.
Thakur Har Prasad Singh.
Thakur Keshava Chandra Singh Chaudhri.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhy.

Raja Sri Krishna Dutt Dube.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Dr. Jaikaran Nath Misra.
Rai Bahadur Thakur Mashal Singh. ●
Mr. Muhammad Aslam Saifi.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan. ●
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmad Ali Khan Alvi.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.

Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Bahadur Brij Narayan Rai.
Mr. H. O. Desanges.
Mr. H. David.
Babu Khem Chand.
Lala Kishan Lal.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh.

Noss.

Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Raja Suryapal Singh.
 Lala Dhakan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Rai Bahadur Pandit Balbhadra Prasad Tiwari.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 Raja Indrajit Pratap Bahadur Sahi.

Rai Bahadur Thakur Mashal Singh.
 Khan Bahadur Hads Hidayat Hussain.
 Khan Bahadur Mr. Muhammad Ismail.
 Maulvi Abdul Hakim.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Maulvi Muhammad Fasi-ur-Rahman Khan.
 Mr. E. M. Souter.
 Mr. Tracey Gavin Jones.

Hon'ble the President: Khan Bahadur Mr. Muhammad Ismail gave notice this morning of permission to move an amendment adding a sub-clause (g) to this, which would run—"municipal trenching ground." As notice of this amendment was received late, is there any objection to its being moved?

There being no objection the honourable member was allowed to proceed.

Khan Bahadur Mr. Muhammad Ismail: I beg to move that a sub-clause (g) be added "municipal trenching ground." This is a small matter, but I think it is a very important one. A number of municipalities have got trenching grounds which are used by rotation and when the land is not required it is leased out to tenants on very high rent. If there is no exemption the result would be that the land would not be used for cultivation and in consequence the municipal boards would lose heavily. It would be a public loss and the tenants also would lose, because they get a bumper crop in the field. Therefore, I move this amendment in the interest of the tenants as well as the public.

Hon'ble Sir Sam O'Donnell: I entirely agree with Khan Bahadur Mr. Muhammad Ismail. I think this is a very reasonable proposal in the interest of the municipalities and also, I think, in the interest of the tenants.

Pandit Govind Ballabh Pant: I support the amendment.

Question, that a new sub-clause "(g) municipal trenching grounds" be added, put and agreed to.

Rao Sahib Kunwar Sardar Singh: I move that a sub-clause (h) be added to clause 19 as follows:—

"Lands notified by the Government in the gazette as tea gardens before the commencement of this Act."

جناب والا —

اِس ترمیم کے لئے سے میرا صرف یہ مقصد ہی کہ یہ، جو Tea gardens میں کاشتکاران ہیں اگر اُن کو حق حین حیاتی دیا جائیگا تو کم از کم چاہے کمی بہت کمی ہو جائیگی۔ جو کچھ یہی کاشتکاران یہاں پر موجوں ہیں اُن کو زمینداران نے پہلے سے کچھ رعایتیں رکھ دی ہیں اِس سے میں چاہتا ہوں کہ اُن کو حقوق حین حیاتی نہ دیئے جائیں ورنہ چاہے industry کو بہت نقصان پہنچے گا۔

Khan Bahadur Shafik Masud-us-Zaman: I rise to support this amendment because I believe that the tea industry needs protection and

[Khan Bahadur Shaikh Masud-uz-Zaman.]

unless statutory rights are disallowed to accrue in such tea gardens, the proprietors will not be able to spend money for the development of the industry and consequently the tea industry will naturally suffer badly. I think most of the tea gardens are in the hands of Indians and therefore, since it is essentially purely an Indian industry, it must be encouraged. I think it was by mistake that the select committee omitted these gardens and in the light of the circumstances known to everyone of us now I think these gardens must be included in the exemption.

Thakur Manjit Singh Rathor : I desire to say a few words with regard to the amendment that has been moved by Kunwar Sardar Singh. I am quite sure that Dehra Dun is well known for the tea industry and tea is the only chief product which Dehra Dun produces. It is not my desire that the tea industry should in any way suffer. On the contrary, I am anxious that the tea industry should be given as much support by us and by the State as any other industry could possibly be given, because our desire is to make India, as far as possible, also an industrial country along with the progress that we desire the country to make in the line of agriculture. But there are certain other points that should be put before this Council, which should be considered before a subject like this should be decided upon. Probably this Council is not aware that Dehra Dun is the only district which has got the highest percentage of non-occupancy tenants. I would like to put some figures before the Council. Out of 72,333 acres of land which is culturable in the district, only 13,255 acres are under occupancy tenants, and 59,078 are non-occupancy tenants. So, while I am anxious that the tea industry should be given as much support as possible, I am also anxious that the interest of the tenants and of the peasantry should be safeguarded and protected. I would, therefore, with your permission, move a certain amendment to the amendment moved by my honourable friend Kunwar Sardar Singh. The result of my amendment would be that while we shall protect the tea industry we shall also be protecting the interest of the tenants and we shall not put the tenants to any very heavy loss.

I beg to move that the words "or land required for the renewal and extension of tea gardens" be added after the words "in the gazette as tea gardens" in the second line of the amendment of Kunwar Sardar Singh. My amendment is this:—

Add the words "or land required for the renewal and extension of tea gardens" after the words "tea gardens" in amendment No. 531 and at the end of the amendment delete the full-stop and add the following proviso:—

"Subject to the proviso that—

Firstly, no . . ."

Hon'ble the President : The honourable member should speak slowly. The Chair cannot be expected to do the work of a stenographer. Have you got another copy of the amendment?

Thakur Manjit Singh Rathor : Yes, Sir.

Hon'ble the President : The amendment has been couched in a very good language and the honourable member has not taken to it at once.

It has been thought out in spare moments. I think I should inform honourable members that if they want to make an amendment of a complicated nature and which they have carefully thought out they should in courtesy give one copy of it to the member in charge and one to the Chair.

Thakur Manjit Singh Rathor : I am sorry, Sir, I shall conform to the ruling in future. The amendment is—

“Subject to the proviso that—

Firstly, no ejection of existing tenants in the land will take place unless expressly for the purpose of renewal and extension of tea gardens.

Secondly, that rent in these lands will be 40 per cent. less than in the adjoining agricultural lands of similar quality, and

Thirdly, that the land to be exempted for renewals will not exceed 50 per cent. of the land actually under cultivation or of land declared by Government as required for extension.”

Hon'ble the President : I have heard the terms of the amendments moved by the honourable member from Dehra Dun. The honourable members will notice that the terms of his amendment alter the scope of the main amendment to a considerable extent. It is not a verbal amendment or an amendment calculated to improve the language of the amendment which is at present before the House. It is really of a substantial character which will alter the scope of the amendment in question : it is almost an independent amendment. I dare say that the amendment of which notice has been given by Kunwar Sardar Singh has been before the House for a number of days ; so that if any member wanted to alter the nature of that amendment to the extent that the honourable member from Dehra Dun proposes to do, it is but right and fair that a notice should have been given to the House. I have been relaxing rules to a certain extent and allowing amendments to be moved in the House without previous notice, as we are dealing with an important piece of legislation. We should not pass anything in hurry and try to improve the language and make it as concise and precise as possible. It was on account of this that I have relaxed rules as to amendments to amendments from time to time.

Honourable members will, however, agree with me that this amendment is not of that character. I realize the importance of the amendment ; I realize also that it affects large interests in the Dehra Dun district, and the House may, if they want, condone the want of previous notice and allow him to move it, but so far as the Chair is concerned, I must ask if any member has any objection, and if honourable members, having regard to the importance of the question, do not object, the amendment can be discussed. The amendment of the honourable member for Dehra Dun is there. Is there any objection ?

Mr. E. M. Souter : I object.

The amendment was accordingly disallowed.

Thakur Manjit Singh Rathor : My desire was that the amendment as moved by Kunwar Sardar Singh should be moved in such a form as to meet the wishes of all concerned. As honourable members will have noticed from the amendment notice of which I gave just now, I wanted to

[Thakur Manjit Singh Rathor.]

make the situation as nice for everybody concerned as possible and my tea planter friends would have agreed with me.

I desire not only to give them . . .

Hon'ble the President : His amendment is not before the House now.

Thakur Manjit Singh Rathor : Since I am not permitted to move my amendment I now come to the amendment as moved by Kunwar Sardar Singh. I fear I have no option but to oppose it, and I will say a few words with a view to persuade honourable members of this House to realize the importance and necessity of recording their opposition to the amendment as moved by him. As I have already pointed out in my remarks, it is not my desire that the tea industry should suffer, but I am also anxious to see that the district of Dehra Dun should not be singled out for the non-conferment of those blessings—if they can be called blessings—which this Bill intends to confer on the tenants in all the 48 districts of this province. The tenants will have the advantage of enjoying life-tenancy according to the provisions of this Bill all over the province. Dehra Dun is the only district which is sought to be singled out and where the tenants who are 74 per cent. non-occupancy tenants will not enjoy the blessings of life-tenancy. I think it will really be a misfortune to those tenants who have tilled the soil with the sweat of their brow, who have invested all that was with them and who have invested that in order to give their children the benefit and blessing of life-tenancy. Personally I am of opinion that occupancy right is the only safest and surest method by which we can appease the unrest which has been caused among the dumb millions and the poor down-trodden and oppressed tenantry of this province, but since that is out of the question and since this Bill desires only to confer life-tenancy, it will be a piece of the greatest misfortune that can be thrown on the dumb and poor peasants of Dehra Dun if you are going to single them out for being deprived from the blessings of even life-tenancy. In the circumstances I fear I have no option but to record my most considered and thought-out opinion that the only way by which you can save the peasants of that district would be to confer the same right of life-tenancy on the tenants of Dehra Dun as you are going to confer on the tenants elsewhere. Sir, before I resume my seat, I would like again to point out to honourable members who are present in this House to consider the condition of those people who have made the hilly tract of Dehra Dun agricultural and who have devoted the savings of their life in order to turn into fertile fields, into nice productive land, the forest and the barren land of the district. I would like the honourable members who are present here to imagine the difficulties and the drawbacks under which the tenants and peasants of Dehra Dun labour. If those members who are here will extend a helping hand and the hand of justice and fair play to the peasants of Dehra Dun, I think they would be earning the unexpressed gratitude of the thousands of men who are in the district of Dehra Dun. Members who will confer this boon on the district of Dehra Dun will not injure their own interests; they will safeguard their interests and the interests of the zamindars in their districts. If they give the tenants of Dehra Dun the blessing of life-tenancy, they would only be doing an act of justice, an act of fair play and an act of charity.

With these words I beg most strongly and most emphatically to oppose the amendment which has been moved by my honourable friend, Kunwar Sardar Singh.

Rao Sahib Abdul Hameed Khan :

جناب صدر —

یہ ترمیم جو میرے دوست راؤ صاحب کٹر سردار سنگھ صاحب نے پیش کی ہے اُس کے متعلق اور نیا اُس اختلاف کے متعلق جو میرے دوسرے دوست مسٹر راٹھور نے فرمایا ہے میں کچھ عرض کرنا چاہتا ہوں۔ چونکہ اِس وقت راٹھور صاحب کی ترمیم کونسل کے سامنے نہیں ہے اِس لیے مجبوری ہے میں اُس کے متعلق کچھ عرض نہیں کر سکتا۔ لیکن میں اِس کو بھی پسند نہیں کرتا کہ اگر وہ کسی اصطلاحی غلطی کی وجہ سے کونسل کے سامنے نہ آسکی تو سردار سنگھ صاحب کی ترمیم کی مخالفت کی جائے۔ میرا فرض ہے کہ دھڑوں کی حالت بحیثیت وہاں کے نمائندہ ہونے کے عرض کروں *

جناب والا —

دھڑوں اِس صوبہ میں ایک ہی جگہ ہے جہاں چائے کی کاشت کے لیے بہترین مواقع اور آب و ہوا موجود ہے۔ چائے کی پیداوار سے جو خاص فائدہ اِس ملک کو پہنچا یا پہنچ رہا ہے اور پہنچیکا وہ اظہر من الشمس ہے۔ چائے یہاں ہم سب کی روزمرہ زندگی کا جز بنا چکی ہے۔ چائے کی ایک بڑی مقدار باہر سے آتی رہی ہے جو یقیناً ہمارے لیے اقتصادی اور مالی لحاظ سے بہت ہی تباہ کن ہے ہر وہ چیز جو ہمارے ملک میں باہر سے لائی جاتی ہے یقیناً ہمارے روپیہ کو باہر لے جاتی ہے اور اِس طرح ہم روز بروز باہر سے آتی ہوئی چیزوں کی ترقی مقدار کے ساتھ مفلس اور بے زر ہوتے جا رہے ہیں یہی مقصد مشہور ہرنلےزیز "سودیشی" تحریک کا ہے *

ہمیں ان باتوں کا لحاظ رکھتے ہوئے سردار سنگھ صاحب کی ترمیم کے متعلق رائے قائم کرنا چاہیئے۔ دھڑوں میں چائے کے کام میں ابھی تک پوری کامیابی نہیں ہوئی ہے لوگوں نے اپنا روپیہ لگایا ہے۔ اُن کی ہمت اور جرات قابل تعریف ہے کہ وہ تمام مالک کی طرف سے اِس صنعت و حرفت کو کامیاب بنانے میں کوشاں ہیں اور اگر وہ کامیاب ہو گئے تو پھر چائے جو باہر سے آتی ہے اُس کا اُن یقیناً بند ہو جائیگا اور کیا تعجب ہے کہ یہاں سے باہر کو جانے لگے *

جناب والا — مجھے راٹھور صاحب کی تقریر کے متعلق یہ عرض کرنا ہے کہ دھڑوں کے متعلق انہوں نے فرمایا ہے کہ وہاں اُس ضلع میں سب سے زیادہ موردنی کاشتکاروں کی تعداد ہے۔ لیکن وہ یہ کہنا شاید بھول گئے کہ وہاں صرف چائے کے باغات ہی نہیں ہیں بلکہ وہاں ہر قسم کے اُڑ کھیت بھی ہیں *

Thakur Manjit Singh Rathor : May I give a personal explanation? I beg to point out that the percentage of land belonging to non-occupancy tenants in the tea gardens at Dehra Dun is more than 70.

Rao Sahib Abdul Hameed Khan :

اِس کے بعد مجھے آپ کی اجازت سے یہ عرض کرنا ہے کہ دھڑوں کی چائے کے باغات میں جو کاشتکار ہیں اُن کے لیے درحقیقت کاشتکار کا لفظ غلط ہے بلکہ اُس کے لیے زیادہ صحیح لفظ مزدور ہے۔ ہمیں اِس خاص معاملہ

[Rao Sahib Abdul Hameed Khan.]

کے متعلق غور کرنا ہی اور یہہ سمجھ کر غور کرنا ہی کہ یہہ معاملہ اُن
مزدوروں کا ہی جو وہاں مختلف اراضیات متعلق باغات چاء میں کاشت کرتے
ہیں۔ جن لوگوں کو چاء کے باغات سے کچھ تعلق اور دلچسپی ہی وہ
اچھ طرح سمجھ سکتے ہیں کہ یہہ ایک ایسا درخت ہی کہ پانچ سال میں
پرورش پاتا ہی اور اُس میں اکثر بہت سے امراض پیدا ہوتے ہیں جن کی
وجہ سے اراضی تبدیل کرنا لازمی اور ضروری ہو جاتا ہی۔ ایسی صورت میں
جہاں کھیتوں کا تبدیل کرنا صرف قدرت کے ہاتھ میں ہو انسان بالکل لاچار ہی
اور کسی خاص موردنی یا حق حین حیاتی کا دیا جانا غریب مالک باغ کو
خواہ مخواہ معذور اور پریشان کرنا ہی۔ اگر آپ قدرت سے مقابلہ کی کوئی تدبیر
بنلا دیں تو شاید درخت تبدیل کرنے کی بھی ضرورت نہ ہو۔ اس کے ساتھ ہی
میں ایک ایسی بات عرض کرنا چاہتا ہوں جو ممکن ہی کہ بعض صاحبان کے
دلوں میں ہو اُس کو بھی صاف کر دینا ضروری ہی۔ ایک عام غلط فہمی
یہہ ہی کہ دھڑلے داروں کے باغات یوروپیئن صاحبان کی ملکیت ہیں۔ اس
میں شک نہیں کہ ایک وقت تھا کہ یہہ تمام باغات یوروپیئوں کے ہاتھوں میں تھے
لیکن اب ہمارے بہت سے روشن خیال ہندوستانی زمینداروں نے اس کام کو
سنیہال لیا ہی اور اب اُن کے باغات کی تعداد یوروپیئوں لوگوں کے باغات سے
زیادہ ہی اس لیے اس قسم کا کوئی خیال اپنے ذہن میں نہیں آنے دینا
چاہیئے اور نیز وہاں کے کاشتکاران کی حالت پر اُس حیثیت سے غور کرنا
چاہیئے کہ وہ وہاں صرف چاء کے باغات میں کام کرنے کی مرض سے رکھے گئے
ہیں بطور اُجرت کے اُن کو زمین کاشت کے لیے دی جاتی ہی۔ ایسی
صورت میں یہہ ہرگز صحیح نہ ہوگا کہ اُس زمین پر حق حین حیاتی
دیا جائے یہہ زمین حقیقت میں زمیندار محفوظ رکھتے ہیں اور اس غرض
سے رکھتے ہیں کہ چاء کے کھیت میں کوئی مرض پیدا ہو جائے تو وہ زمین بچاے
اُس کے استعمال کی جاسکے علاوہ ازیں بالکل مزدوری کی اُجرت کے طور پر وہ
زمین کاشت کرنے کے لیے دی جاتی ہی اُن کاشتکار یا مزدوروں کو فیکٹریز ایکٹ
کے تحت میں بہت سی سہولیتیں حاصل ہیں اور اُن کے متعلق بہت سی
ذمہ داریاں زمینداروں کے سر ہیں لیکن اس قسم کی سہولیتیں ہمارے یہاں
کے کاشتکاروں کو نہیں ہیں اس لیے چاء کے باغات کے کاشتکار بہت ہی
مختلف حیثیت رکھے ہیں یہہ خوب سمجھ لینے کہ درحقیقت چائے کے
باغات کے مالکان کو زمین ایسی ضرورت سے دوگنی اور تگنی زیادہ رکھتی پڑتی
ہی اور جو کہ چاء کے باغات کے لیے اُن کو مزدوروں کی ضرورت ہی ہوتی ہی
اس لیے وہ اُس زمین کو مزدوروں کو اُنہا دیتے ہیں تاکہ زمین پر کاشت رہے اور وہ
لوگ وہاں موجود ہی رہیں۔ وہ لوگ فیکٹری کے مزدوروں اور مالکوں کی طرف
میں نہ کہ کاشتکاروں اور زمینداروں کی طرح۔ اس لیے میں آپ سے اپیل کرتا
ہوں کہ مہربانی کر کے اپنے یہاں کی حالت کا خیال کرتے ہوئے اس مسئلہ پر رائے
نہ دے چھوئے بلکہ یہہ سمجھ کر دھڑلے داروں کے یہہ کاشتکاران اور چاء کی
کاشتکاری بہت مختلف نوعیت رکھتی ہی *

Thakur Manjit Singh Rathor : May I give a personal explanation, Sir? The percentage of non-occupancy tenants in the tea gardens is higher than in lands other than tea gardens.

Babu Sangam Lal : I have no option but to oppose the amendment as moved by Kunwar Sahib. Kunwar Sahib and Mr. Masud-uz-Zaman adduced no reasons why tea plantations should be exempted. He made a statement that it was perhaps by an oversight that the select committee did not consider it. As a member of the select committee I may inform him that we did consider this matter in the select committee.

Hon'ble the President : Order! Order!! The proceedings of the select committee are confidential. Whether the select committee considered a thing or not should not be disclosed to the House.

Pandit Govind Ballabh Pant : I submit that formerly it has been ruled on some occasion that while the discussion in the Finance Committee is confidential it is not so in the case of the select committee. So I want to know, Sir, whether the ruling given by you is final on this subject or whether it is for the time being.

Hon'ble the President : I am not aware of the ruling referred to by the honourable member for Naini Tal. As far as the proceedings of the select committee are concerned they are confidential; As a matter of fact I remember having given a ruling as regards the select committee of the standing orders. If I remember aright Mr. Mehrotra wanted to refer to certain proceedings of the select committee on standing orders and then I said that as the standing orders were of the House the House was entitled to know everything about them. But as regards a piece of legislation it is a well-established practice that the proceedings of the select committees are confidential and no member is entitled to disclose them.

Babu Sangam Lal : I bow to your ruling, Sir, and will not refer to what happened in the select committee; but this much can be said that we gave considerable thought to the matter and we did come to certain conclusion.

Hon'ble Sir Sam O'Donnell : That is referring to the proceedings of the select committee.

Babu Sangam Lal : He also said that the industry is in the hands of the Indians.

Khan Bahadur Shaikh Masud-uz-Zaman : "Mostly," I said.

Babu Sangam Lal : The honourable member for Dehra Dun said that it was perhaps thought that it was in the hands of Europeans and therefore we did not exempt it. Well, Sir, so far as the tea industry is concerned, whether it is in the hands of Indians or Europeans we are not concerned with that. Sitting here as members of the legislature we cannot take any steps, moved by the consideration that because a certain industry is in the hands of Europeans therefore it should necessarily be crushed or that because it is in the hands of Indians, therefore it should necessarily be encouraged. Our object is to encourage all industries, provided we safeguard the interests of workers and the other people there. Therefore, so far as the encouragement of the tea industry is concerned,

[Babu Sangam Lal.]

all are one so far as that goes, but we should see whether by exempting tea gardens from the operation of this Bill we shall be really benefitting the industry and not injuring the rights of those who work there. Now, Sir, it has been said that in tea gardens the land is in the hands of those persons who are labourers. From certain gentlemen who have come from Dehra Dun and have been canvassing here I learn that all the agricultural land in tea gardens is not in the hands of labourers. There are a large number of tenants, there are a large number of men who are cultivating the land who are not working as labourers in tea gardens and who have not been given land in lieu of labour or in order to induce them to work there. Besides this the amendment as moved is very vague. It vests large powers in the hands of Government. I think legislation should not be vague. It says lands notified by Government in the Gazette as tea gardens before the commencement of this Act. Now, Sir, we are entitled to know under what conditions the Government will notify the places or the particular number of acres as tea gardens. What are those conditions? We must lay down certain conditions. I think, Sir, the subject is very very important. On the one hand we have great consideration for the tea industry of Dehra Dun. On the other hand we are very anxious to protect the legitimate rights of tenants there. Therefore I would suggest that the consideration of this sub-clause be postponed till tomorrow, so that we may sit down and come to some agreement which may be acceptable to the whole House, and I think in that way we shall be protecting the interests of both.

Raja Shambhu Dayal :

جناب پریسڈنٹ صاحب —

چاء ایک ایسی ضروری چیز ہے کہ جو نمک سے بھی زیادہ ضروری ہے (تہقہ) — اس کی بابت کچھ زیادہ عرض کرنے کی ضرورت نہیں ہے اس کا نام ہے چاء ہے کون ایسا شخص ہے جس کو چاء نہیں ہے (تہقہ) — اس کونسل چیئرمین کے اندر دیکھ رہے ہیں وہاں ہوا ہوا ہے لہذا کسی دہاندہار تقریر کی ضرورت نہیں معلوم ہوتی (تہقہ) — میں صرف یہ عرض کرونگا سوراہست صاحبان سے کہ جب گورنمنٹ کی ترمیم متعلق ریلوے اراضی و نیز cantonment اراضی withdraw کر لی گئی تو ہم لوگوں نے کیا تصور کیا ہے *

کل پھینکے ہیں غیر درں کی طرف بلکہ ٹپ بھی

اے خانہ برانداز چمن کچھ تو اُدھر بھی

یہ ضرورت راؤ عبدالحمید خان صاحب نے ظاہر کر دی ہے کہ زمینداروں کو اراضی بدلنے کی ضرورت ہوا کرتی ہے لہذا کوئی وجہ نہیں معلوم ہوتی کہ چاء کی اراضی مستثنیٰ نہ کی جاوے — لہذا میں اس amendment کی تائید کرتا ہوں جو راؤ صاحب کنور سردار سنگھ صاحب نے پیش کی ہے *

Pandit Brijnandan Prasad Misra : Point of order. Is it permissible to postpone the consideration of a particular clause or sub-clause till tomorrow under the standing orders, and is it also permissible to postpone the whole Bill?

Hon'ble the President : The House is at liberty to postpone, if it likes.

The motion that the consideration of this sub-clause be postponed till tomorrow was put and negatived.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : I am really very sorry that I have stood up at this late hour of the day to take the time of the Council.

Hon'ble the President : The honourable member must remember we have got to finish this clause today. If there are no new arguments to put forward he had better not make a speech.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : I have one new argument, and I shall not take more than a few minutes. I beg to move, with your permission, Sir, a slight amendment to the amendment that is before the House. That amendment of mine, Sir, is not so . . .

Hon'ble the President : Will the member give us the terms of his amendment first ?

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : I move, Sir, that between the words " before " and " the " occurring in the second line, insert " or after."

Hon'ble the President : This would be altering the scope of the amendment.

Objection was raised to the moving of the amendment.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : I may be allowed to explain ?

Hon'ble the President : It is not a verbal amendment. The honourable member cannot, under the standing orders, explain the reasons if he is not allowed to move it. Objection having been raised he cannot move the amendment.

Raja Shambhu Dayal :

جناب صدر —

میرا خیال ہی کہ اس مباحثہ کو آج ہی ختم کر دینا چاہیئے اس وجہ سے کہ ۱۰ تاریخ تک کونسل کا وقت رکھا گیا ہی تمام دفعات بل کی باقی ہیں یہ کیسے ختم ہو سکیگا — ایک amendment جو move ہوئی ہی اس کی امینڈمنٹ کو پریسڈنٹ صاحب نے allow نہیں کیا ظاہر ہی کہ اب کوئی امینڈمنٹ نہیں ہو سکتا نہ کوئی فیصلہ ہو سکتا ہی سوائے اس کے کہ یا تو اس توہم کو منظور کیا جائے یا نامعلوم کیا جائے اس وجہ سے میں یہ عرض کر رہا کہ اس مباحثہ کو آج ہی ختم کر دینا چاہیئے *

Hon'ble Sir Sam O'Donnell : I think Mr. Sangam Lal said that the honourable mover of this amendment did not explain the necessity for it. It gave no good reason for exempting any land used for tea gardens. Well, Sir, I think I can explain the position very briefly. Tea plants, like other things, grow old in the course of time, and they lose their productivity. On the other hand it takes five years before the new plants mature

[Hon'ble Sir Sam O'Donnell.]

and yield a crop. Therefore tea planters have to plant new plants about five years before the old plants will cease to yield. If they did not do that their land would lie idle for years. It is in order to have available a certain area which they can take up and plant afresh that extra land is necessary. Now, Sir, I personally would have had no objection in substance to the amendment proposed by the member for Dehra Dun. I think his amendment would have required a great deal of redrafting, but as far as the substance went I should have had no objection. On the other hand I do not think his conditions are really essential. In the first place nearly all this land is not let to ordinary tenants at all. It is cultivated by the labourers on the estate. It is given to them to cultivate as a means of supplementing their earnings. There really therefore is no question of ejectment. They are labourers employed by the estate and if the land is required for renewals and extensions they vacate the land. Further, the land which they cultivate they get upon very low terms, rents far below the rents on the neighbouring land. Of course the object of any well-run estate is to get labourers and to keep them. It is not, therefore, in the interests of these estates to oppress their labourers, and, so far as my information goes, these labourers have no grounds for complaint. If this amendment is accepted I think the Council may take it we shall exercise great care in notifying land as tea gardens. It would certainly not be our desire to notify more than is strictly essential to the welfare of the tea industry.

Mr. Mukandi Lal: I would not have been surprised at the support given by zamindars to the amendment, but I am really surprised at the support given to this by the Hon'ble the Finance Member, as representing Government and as the spokesman of the Government. When various other amendments were pressed before the House on various clauses the Government swore by the existing law, the report of the Tenancy Act committee and the select committee. Now this amendment must have been brought to the notice of the committee in 1924. As the secret has been divulged, and as I was not a member of the select committee, I can speak on the point. It seems from the words of Babu Sangam Lal that the select committee did discuss this point. If the select committee did not think it fit to put this into the provisions why has it now been brought forward? Government is always opposed to new clauses being inserted. Sir, so far as the Government forest land is concerned I could have appreciated Government's anxiety about the encroachment on forest land. But now we are discussing tea gardens. The term "tea gardens" is an elastic term and the gardeners might well in course of time keep on extending their gardens to inordinate limits on the plea that they want more reserve land for renewals and extensions on the pretext of wanting more labourers. If this is the idea then we have got the various proposals before us, if the real intention of the gardeners is to develop the tea industry they can do so without any special provision of this kind. It is well known that Europeans are selling their tea gardens in Dehra Dun. Why? Because they realise that it is not a paying and successful industry. And you may be sure that if in the hands of Europeans the industry cannot succeed in Dehra Dun, it will not prosper in the hands of Indians. I can prophesy today that the tea industry, if it has not prospered in the hands of European tea gardeners, will not be a paying proposition in the hands of Indian tea gardeners. Therefore, the appeal in the name of the

tea industry is all a false appeal. I appeal to the House to consider this amendment in the same light—whether we consider it as pro-zamindars or pro-tenants—as we did others. So far as we are concerned, our position has been an impartial one. We have been considering all amendments on grounds of justice. If you have attempted to take certain privileges for the tenants from the forest land we have done the same from the zamindars. So far as we are concerned, we stick to the principle of justice. Though the Government are going to give in we are not going to give in. It is a matter of principle with us and I hope that the House will see the reasonableness of our opposition and reject the amendment.

Rao Sahib Kunwar Sardar Singh :

جناب پر سیدنت صاحب —

میرے بہت سے مہربانوں نے اس کی مخالفت میں اور اس کی تائید میں بہت اسپیچیں دی ہیں۔ مجھے اس کے متعلق کچھ زیادہ نہیں عرض کرنا ہی میں House کے اڈر چھوڑتا ہوں *

Babu Nemi Saran : In his speech the Hon'ble the Finance Member said that if this . . .

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : On a point of order. Can the honourable member speak now?

Hon'ble the President : The honourable member is asking a question, and I have permitted him.

Babu Nemi Saran : In his speech the Hon'ble the Finance Member said that if the amendment was carried he would take the care in notifying any of the tea gardens. This amendment says, "before the commencement of this Act." Is he going to notify them before the commencement of this Act?

Hon'ble Sir Sam O'Donnell : If they are not to be notified before the commencement of the Act, I do not know when they will be notified.

Babu Nemi Saran : They are all notified?

Hon'ble Sir Sam O'Donnell : I do not think so.

Thakur Manjit Singh Rathor : What will be the area which the Government will exempt in addition to the land under cultivation at present?

Hon'ble Sir Sam O'Donnell : How can I possibly answer that question? We do not know that. What we shall do is to exercise great care in the matter.

Thakur Manjit Singh Rathor : Will Government permit small tea planters to have extensions?

Hon'ble Sir Sam O'Donnell : We shall notify as much as is required for the purposes of tea gardens and not more.

Pandit Govind Ballabh Pant : I want to move an amendment.

Hon'ble the President : The amendment cannot be moved now.

Hon'ble Sir Sam O'Donnell: I have very little to add to what I have already said. It is not possible for me, as you know, Sir, to refer to the proceedings of the select committee. I venture to agree entirely with your ruling that we cannot refer to the proceedings of the select committee. But if it were possible to refer to them I should have no difficulty in meeting the criticism of certain honourable members that the select committee did not put in any provision regarding tea-gardens.

Question put, that the words "Lands notified by the Government in the Gazette as tea gardens before the commencement of this Act" be added as a sub-clause to clause 19.

The House divided: Ayes, 62; Noes, 25.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lano.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad E'jaz Rasul Khan.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Lala Kishan Lal.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryopal Singh.

Lala Dhakan Lal.
Rao Sahib Kunwar Sairdar Singh.
Rai Bahadur Pandit Dalbhadra Prasad Tiwari.
Raja Sri Krishna Dutt Dube.
Bhai Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Maulvi Shabab-ud din.
Khan Bahadur Chaudhri Amir Husain Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Sa'iyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Husain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Hashid-ud-din Ashraf.
Rai Bahadur Lala Bohari Lal.
Raja Shambhu Dayal.
Lieut. Raja Shaikh Imtiaz Rasul Khan.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Noes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksena.
Babu Damodar Das.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Thakur Sedho Singh.
Pandit Kripipandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Pandit Jhanni Lal Pande.

Thakur Har Prasad Singh.
Thakur Keshva Chandra Singh Chaudhri.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anand.
Pandit Yajna Narayan Upadhyay.
Rai Sahib Babu Dip Narayan Roy.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Dr. Jalkaran Nath Misra.
Maulvi Zahur-ud-din.

Hon'ble the President: I notice that honourable members are impatient to go home. Many have come and asked me for the adjournment of the House. I must point out here that we are making very slow progress. We are at clause 19 now. Honourable members know that pages and pages have still to be got through. I sympathize with honourable members and I hope honourable members will also sympathize with me. The point is that unless our pace is accelerated we shall be stuck up here in this foggy atmosphere. Already the Raja of Salimpur is anxious to get the Council adjourned after the 10th in order that Muhammadan members may enjoy the holidays for Muharram. If that be the case, the month of August being rainy and wet, we do not know where we shall be. I can only appeal to honourable members to confine their attention to important amendments. As I said a short while ago, we are not in the select committee stage, we are now discussing the Bill in the open Council. If honourable members will take upon themselves the right of examining every comma, full-stop and semi-colon, I do not know where we will be. Of course I do not dispute the right of honourable members to scrutinize every bit of the Bill. But so far as that is concerned that has been done in the select committee. I would request honourable members to confine themselves to important matters and not waste much breath either in supporting or in moving amendments. With these words and on the distinct assurance that this will be done from tomorrow, I adjourn the House till tomorrow.

APPENDIX A.

*(See page 335 supra.)**List of existing hereditary darbaris referred to in answer to unstarred question No. 4 for July 5, 1926.*

1. All hereditary title-holders.
2. All taluqdars in Oudh. Only one representative of each taluqa being ordinarily admitted to the darbar list.
3. The following other gentlemen :—

MEERUT DIVISION.

- (1) Saiyid Akbar Ali Khan of Pindrawal Bulandshahr district, a gentleman of good family, large property and influential position.
- (2) Chaudhri Sham Sundar Narayan Singh of Asora, Meerut district, whose family has always been represented in darbars and whose ancestors were called Chaudhri under the Mughals.

ROHILKHAND DIVISION.

- (3) Munshi Khurshid Hasan Khan, and
- (4) Khan Bahadur Maulvi Muhammad Zahur-ud-din Khan of Shergapur, Pilibhit district—members of an old Pathan family which did good service during the Mutiny.

ALLAHABAD DIVISION.

- (5) Vaman Rao Bhaiya Sahib of Bithur, Cawnpore district, a descendant of the Commander-in-Chief of the Peshwa; family received a grant for services to the British Government.

GORAKHPUR DIVISION.

- (6) Babu Bhuneshri Prasad Narayan Singh of Rasulpur, Azamgarh district—of good family and local influence.

FYZABAD DIVISION.

- (7) Bhaiya Lat Bakhsh Singh, and
- (8) Bhaiya Rampal Singh of Majhgawan, Gonda district—members of the family of the late Raja Har Ratan Singh of Majhgawan.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Tuesday, July 6, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m.
Hon'ble Rai Rahadur Lala Sita Ram in the Chair.

PRESENT :

(102)

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Sa'id Khan
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billon.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad E'jaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Mr. H. O. Desanges.
Mr. H. David.
Babu Khem Chand.
Lala Kishan Lal.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksena.
Babu Damodar Das.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Beder.
Thakur Manjit Singh Rathor.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Pandit Nanak Chand.
Lala Babu Lal.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Ambe Prasad Sahib.
Rai Bahadur Pandit Kharagjit Misra.
Raja Suryopal Singh.
Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Pandit Jhanni Lal Pande.

Thakur Har Prasad Singh.
Thakur Kesh. va Chandra Singh Chaudhri.
Lieut. Raja Durga Narayan Singh.
Rai Bahadur Pandit Balbhadra Prasad
Tewari.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhyaya.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan
Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Raja Shankar Sahai
Dr. Jaikaran Nath Misra
Rai Bahadur Thakur Mashal Singh.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saif.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahaab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Shaikh Masud-us-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq
Hussain.
Khan Bahadur Maulvi Fash-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-
Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Hussain Misra.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmad Ali Khan Alvi.
Khan Bahadur Chaudhri Muhammad
Rashid-ud-din Ashraf.
Shahid Abdus Samad Ansari.
Rai Bahadur Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Shambhu Dayal.
Lieut. Raja Shaikh Imtias Rasul Khan.
Raja Jagannath Bakht Singh.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

AGRA TENANCY BILL.

Hon'ble the President: We have finished the two provisos to clause 19. Are there any other amendments?

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan: I wanted to move an amendment and make an addition to the instances.

Hon'ble the President: What instances?

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan: a, b, c, d, e, f, g, h.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan: I beg to move the following amendment.—“Add the following at the end of the clause and remove the full-stop that occurs after the word jail”—“(1) land subject to annual alluvion and diluvian;” “(2) newly reclaimed land for a period of fourteen years.”

Hon'ble the President: Will you move both of them together or separately? I think you better move them separately as they relate to different matters.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan: I beg to move that the following words be added at the end:—“land subject to annual alluvion and diluvian.”

Hon'ble the President: If you look at the proviso it says.—“provided secondly that no statutory rights shall accrue in any land acquired or held for a public purpose or a work of public utility,” “land subject to annual alluvion and diluvian” Do you want to restrict it to land acquired for public purposes?

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan: No, Sir. Yesterday we added tea gardens to the instances given in this proviso.

Hon'ble the President: That may have been a mistake. If you want to add it as a separate proviso you have to move it in proper form, unless you mean it to be restricted as land held for public purposes. As you do not mean that apparently, it will have to come in as an exception or as a separate proviso.

Khan Bahadur Hafiz Hidayat Husain: I beg to move that the following proviso be added to clause 19:—

“Provided that no tenant holding under a lease of seven years or more will be allowed to become a statutory tenant till his lease has expired and the tenant has been re-admitted to the holding.”

My object in moving this amendment is to protect the seven-year leases which have been granted by the zamindars, before the present Bill becomes law. It is well-known that such leases were granted to the tenants by the zamindars before they even dreamt that an enactment like the present was in contemplation. The question, therefore, arises, should the tenants who have been occupying land on certain fixed conditions and for fixed period be allowed the same status as tenants who occupy the land under no conditions and on whom life-tenancy is being conferred by the present Bill? When the zamindars gave land to the tenants under long-term leases little did they anticipate that an enactment like the present would be passed, which would convert automatically the tenants of seven-year leases or others of longer duration into statutory tenants. They were justified in thinking that at the expiry of the period of the lease the land would revert to them, and they would

be perfectly at liberty to deal with the land as they pleased. But if we turn all the long-term tenants holding land under definite conditions into statutory tenants, we would be parties to breaking the terms and conditions on which the land is being held by the tenants under the leases. Although it is true that in some of the eastern districts long-term leases are not so much in vogue as they are in the western districts, but the fight is over the principle that once a tenant has entered on land under certain conditions, those conditions must be fulfilled to their finality before variation in status is attempted.

The second point is that on the expiry of the terms law gave the zamindars an opportunity to get the land vacated, and as they heard of the intended change in law they did file ejectment suits, but the Board of Revenue issued a circular letter under which all these suits were stayed. The result is that, although the tenant had no right to stay on the land and although the landlord is eager to come into the possession of the land, yet the circular of the Board of Revenue comes in between the zamindar and his land and a live section of the law has been made lifeless on account of an executive circular of the Board of Revenue. I beg further to point out that, although the Council at its last budget meeting accepted a motion disapproving of the order of the Board of Revenue, yet the Government took no action on it and the attempt now is to legalize what on the face of it is contrary to law. My third point is that rent has increased since these leases were granted and there is therefore no reason why the zamindar should not be allowed to take advantage of this fact in the rural economy of the Province.

The last point is that the tenants were given land on long-term leases, to ensure fixity of tenure. Is it proper to penalize such landlords who consulted more the interests of their tenants, and is it right to deny to such landlords a little extra income that they may get over the management of such land?

Dr. Shafa'at Ahmad Khan : As has been pointed out by my friend Khan Bahadur Hafiz Hidayat Husain, the clause in the Bill, if passed, will penalize good landlords. The good landlords who cared for their tenants instead of giving leases from year to year, gave them leases of 7 years and onwards; and they did this under the impression that by this means the lot of the tenant would be improved. I have got some experience of the lease system in the Moradabad district. In Moradabad a number of landlords gave land on lease because they thought that by this means they will be able to give the tenant that security and that contentment which could not be attained by the one year lease system. The effect of this clause would be that lakhs and lakhs of landlords who have given leases on the assurance that the principle of security of contract, the principle on which we have acted on all this time, will be respected; but if by one stroke of the pen you scrap all the agreements that have been made, not between one or two or three, but between lakhs and lakhs of persons, you are violating that principle. And I think that all persons—whether landlords or non-landlords—would agree with me in saying that if this Council scraps this contract, establishes this precedent, and violates the rights of persons who enjoy undisturbed the fruits of their labours, it will, I am afraid, be acted upon by our successors. The amount of land let on lease is by no means negligible. It, if I am informed correctly, runs into lakhs and lakhs—I think to one million acres. If by this means you deprive

[Dr. Shafa'at Ahmad Khan.]

those landlords of the fruits of their labours you are incurring a very serious responsibility.

For these reasons I think this motion of my friend Hafiz Hidayat Husain should be passed unanimously by this august body.

Rai Jagdish Prasad Sahib : I gave notice of a similar amendment, but instead of moving my own amendment I give my whole-hearted support to the amendment which has just been moved by my honourable friend Khan Bahadur Hafiz Hidayat Husain. Some reasons have already been advanced by previous speakers in support of this amendment. If you just compare the case of holdings which are held from year to year as against those which are held under seven years or longer term leases, you will find that those zamindars who had their land held from year to year are in a much better position under the new Bill than those zamindars who gave seven-year or longer term leases to their tenants and thus allowed a fixity of tenure, because in view of this new Bill which has now been before the public for about two years those zamindars which had their land held from year to year got their tenants ejected and brought as much land under their own cultivation as they liked and gave the rest of the land to such tenants as they pleased and on such revised terms as they deemed proper, while those zamindars who were bound under the terms of these leases could not do so. They could neither bring their land under their own cultivation, nor could they eject those tenants in favour of better men, nor could they enhance the rents. Of course, it will be admitted that the rate of rent has gone high during the last seven or eight years. So those zamindars who allowed fixity of tenure for seven years or more to the tenants will be the sufferers if the present clause is allowed to stand without the amendment of my honourable friend being carried. It is therefore very necessary in the interest of these landlords that they should be allowed an opportunity to eject these long-term tenants and either to bring as much land under their own cultivation as they liked or to admit new tenants or the same tenants on revised terms. So that these landlords may be brought on a level with those landlords who had their land held from year to year.

Secondly, these landlords gave long-term leases under the present law. They trusted your law, but now you say that all those tenants who held under these leases will be made life-tenants. That is to say, the term of their leases will be extended compulsorily. I say, is it fair? Had the landlords known that the new law would make these tenants life-tenants without the zamindars getting an opportunity of ejecting them and bringing the land under their own cultivation or of admitting new tenants on fresh terms, I suppose they would never have given such leases. So those landlords who gave fixity of tenure and were good landlords should not be thus penalized. In future if you do not respect agreements entered into under your laws, the result will be that the public will lose confidence in your laws. Everybody will think that if they entered into a contract under the existing law, nobody can tell what the next law would be under which all those contracts might be treated as mere scraps of paper. I am sure that nobody will like this state of affairs.

Thirdly, the Government are going to increase the term of revenue settlement from thirty to forty years. But they say that the term of

the present settlement will not be extended ; on the other hand the term of the next settlement will be extended. Why, because they say that as zamindars have entered into a contract with the Government for the payment of revenue for a certain period, that contract must stand and therefore the term of the present settlement cannot be extended. Surely the same treatment should be conceded to the landlords as is conceded to the tenants : both should be treated on the same footing. Therefore, the landlords who have given seven years or longer term leases should be allowed an opportunity of ejecting their tenants, and those tenants only should be made life-tenants who are re-admitted by the landlords afterwards. Of course, it is not the object of the landlords to stop the accrual of life-tenancy on such lands permanently. What they want is : let the existing contracts first expire and after that let these holdings become statutory holdings.

With these words I support the amendment.

Pandit Nanak Ohand : I regret 'o have to oppose the amendment of my friend Khan Bahadur Hafiz Hidayat Husain. The Bill under discussion proposes to confer statutory rights, that is life-tenancy on all non-occupancy tenants who have held land even for a period of one year at the time of the commencement of this Act. Surely the case of a tenant holding for seven years or more under the lease is much better ; he is more entitled to hold that land as a statutory tenant as compared with the tenant who has held land for a period of, say, one or two years only and which land was given to him by the landlord also was equally unaware of the present legislation and its consequences. It has been pointed out that it is only the good landlords who have granted these leases to their tenants, and all the other landlords who have allowed land to be cultivated on a year-to-year tenure are bad landlords, and it is suggested that they wanted to keep the sword of Damocles hanging over the head of those tenants and wanted to eject them any time that suited them. I know, Sir, that there are equally good landlords among those who have allowed the tenant to hold on a year-to-year tenancy, as among those who have granted these leases sometimes in succession for the past 14 or 21 years or more to prevent accrual of occupancy rights. I know many instances where the landlord has allowed the tenant to hold land from year to year continuously for a period exceeding seven years on easy terms up to the period of 11 years without ever thinking of enhancing the rent or exacting any *nazrana*. If it is proposed that the benefit should be given to these prudent and cool calculating landlords who gave lands on these leases at fairly high rents on the ground that no occupancy rights would accrue, logically, I do not see why the benefit of such provisions should not be extended to such landlords who have allowed the land to remain in the cultivation of tenants without enhancing rents and without taking any premium. It was pointed out that as soon as this amendment is incorporated in the Bill it will penalize good landlords. If these landlords are good, then what is normally expected of them is that they will allow the same tenant to hold on at the same rent. But on the other hand if they have been good in the past, the amendment proposes to put a temptation in their way to behave as bad landlords at least once in the future on the expiry of the term of the lease. What is the meaning of the suggestion that such zamindars should be given an

[Pandit Nanak Chand.]

opportunity to re-admit the same tenant or a new tenant? The implication of this remark is clear and irresistible, and it is that some of my friends want that those zamindars who have been good in the past should be offered a temptation to eject those unfortunate tenants who have cultivated for seven years or more under these leases. With what object? So that either those very tenants may be re-admitted, or a new tenant may be admitted on revised conditions and terms. What will be these revised conditions and terms I want to inquire from my friends who are in favour of this amendment? To my mind the revised conditions and revised terms will be the exaction of a certain amount of premium or *nusrana* previous to his re-admission or the admission of a new tenant and enhancement of rent. The object of the present legislation is that non-occupancy tenants should be secured some fixity of tenure with fair rents. By this amendment the honourable mover seeks to provide that fixity of tenure which this Bill proposes to confer on non-occupancy tenants should be taken away, and further it is proposed to open the door for enhancing rent up to any limit that may be agreed between the two parties; and knowing the fact as we do that on account of great demand for land the zamindar is the stronger of the two parties, he will be in a position to exact as high a rent as he can on the basis of competition rents. It was pointed out by my friend Dr. Khan that if this amendment is not incorporated it will disturb the right of the proprietors to enjoy the use of their property. To some extent I agree that this will be the effect of not only of this clause if it is passed as it stands without amendment, but on the other hand the result will be that it will secure the enjoyment of this right to the tenant to a limited extent, that is the right to continuously cultivate his holding without any disturbance by way of ejectment by the zamindar, which is the avowed object of this Bill. It is for these reasons that I oppose this amendment of my honourable friend Khan Bahadur Hafiz Hidayat Husain.

Khan Bahadur Maulvi Fasih-ud-din : I have got an amendment in my name on this agenda and I had an amendment as regards clause 8, but the discussion of that amendment was postponed till the discussion of clause 19. My amendment which is now on the agenda stands on a slightly different footing. In fact it is on a materially different footing from the amendment of Khan Bahadur Hafiz Hidayat Husain. I hope that you will be kind enough to let me move that amendment of mine.

Hon'ble the President : Will you move that amendment?

Khan Bahadur Maulvi Fasih-ud-din : I want to move it after making some verbal change, and it will be an amendment to the amendment of Khan Bahadur Hafiz Hidayat Husain. It is this :—

Substitute the following in place of the amendment of Khan Bahadur Hafiz Hidayat Husain :—

“Provided that no statutory right shall accrue in favour of tenants holding under leases of seven years or more or less duly executed before the commencement of this Act and not re-admitted to the holding after the expiry of the term of the lease.”

Pandit Nanak Chand : I object to the moving of this amendment on the ground that it widens the scope of the amendment.

Hon'ble the President: I do not see that there ought to be any objection, because the amendment that Khan Bahadur Maulvi Fasih-ud-din wishes to move now is only a paraphrase of his own amendment of which due notice has been given.

Pandit Nanak Chand: The honourable member has left out a very important word "registered."

Hon'ble the President: He has put in the words "duly executed" which I think can well be interpreted to mean "registered under the law." I therefore allow the amendment to be moved.

Khan Bahadur Maulvi Fasih-ud-din: As I have just said that my amendment stands on a different footing from the amendment of my honourable friend Khan Bahadur Hafiz Hilayat Husain, I would like in this particular respect to point out that in our note of dissent the zamindar members of the select committee very strongly expressed themselves against any innovation against the existing practice, namely, the practice of putting in a saving clause upholding all the agreements entered into by parties and all the acts done under the outgoing law, and we have also put in a strong note against the principle underlying clause 8. It is on this ground that I stand here today in connexion with this amendment of mine. Sir, we all know that it is a very bad policy first to raise hopes in the minds of people on the strength of certain provisions of the law and then to repeal those provisions next day and to cancel all the agreements and covenants that might have been entered on the basis of an existing law. Sir, a provision of this kind, as I have already said, does not help to create confidence in the mind of the public in our laws. My friend Pandit Govind Ballabh Pant for whose resourceful brain, tact and ability I have such a high respect, remarked the other day that the incoming law could repudiate the covenants made under the existing law, and he also said that if the owner of a factory, for instance, contracted with the labourers for working for twelve hours, the incoming law, or in other words the repealing law, could lay down very easily and without any particular objection that the period should be reduced from twelve to six hours. I am afraid that this analogy does not hold good so far as this Bill is concerned. In the first place, the covenant was not between the employer and the labourer for any fixed term. In the second place the covenant was not based on the consideration of a matter of public policy. Here we have got the scheme of seven-year leases sanctioned by an existing law, and the present Bill attacks that scheme to such an extent as to make all the covenants under the existing law null and void even though the period of these leases has not expired. Sir, it is on the basis of this general principle that I have given in my amendment, and I shall now prove from the various sections of the various Acts, and I shall prove in brief terms, that my position is unassailable. There is an Act called the United Provinces General Clauses Act. The first Act was passed in 1887. Section 11 of that Act very clearly laid down that the repeal of any enactment shall not affect any rights, privileges accrued or proceedings taken under the outgoing law.

Hon'ble Sir Sam O'Donnell: Unless the contrary meaning appears.

Khan Bahadur Maulvi Fasih-ud-din: I was coming to that, but that does not mean that all the Acts done under the preceding law should be declared as null and void. It simply says that "unless the contrary

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meaning appears", but that does not show that all the agreements under that Act shall be declared as null and void. Then came in another Act in 1904 and section 6 of that Act also tends to prove the same position that I have taken. As a matter of principle a sound jurist always realizes that our laws should be prospective and not retrospective. He realizes that they should not be mere side-shows of a cinema or the results of the whim and caprice of an opportunist or an individual man or an individual party; they ought to have the sanction of stability; they ought to have about them a halo of sanctity; they ought to inspire confidence; they should not be mere soap bubbles which as Goldsmith said "a breath has made them and a breath can unmake them." It is on this ground that I make my stand today.

Now I come to closer grips with this question, and I take up the question of seven-year leases. If we were to allow life-tenancy to accrue in the case of land which is held under a seven-year lease, I do not think that it will hit anybody. The land that is there will remain there; it will not be translated to the skies. Part of it may be brought under *khudkasht* no doubt, but I am sure that none of the honourable members in this House will object to the zamindar having some land for his self-cultivation. The other will have to be given to some one, and that some one will acquire life-tenancy. The only objection to this scheme which can be raised and which has been raised by my friend Mr. Nanak Chand is this, that the zamindars will be in a position to realize *nazrana* and to rack-rent the tenants. I think this is an idea which has been disproved more than once, and I am very sorry to say that it is being repeated again and again both in the Council and outside the Council. It implies an idea that all the zamindars are so many rapacious wolves who want to rack-rent the tenants and who want to squeeze as much from them as possible. However, it is a matter of principle for which I fight for, and I think that if once we accept this dangerous precedent we do not know where shall we land in. There might be leases which may be permanent leases and which may be benefiting the tenants. If those holders of permanent leases may be declared as life-tenants, then the tenants will suffer. I must assure this House that the number of these *istimrari* leases as they are called is not small in the Agra Province at least. So the scheme that has been laid down in sub-clause (a) of clause 19 is a double-edged weapon which cuts both ways. It is on this principle of equity and justice that I take my stand, and I hope that the honourable House will agree to it.

Rai Bahadur Lala Mathura Prasad Mehrotra: To me this is a very disputed amendment for both the parties—the zamindars and the tenants. If we take up the case of the zamindars we find that the Government has not shown any appreciable consideration to them, rather they have placed as many obstacles in their way as possible. They stopped ejectment suits two years before the enforcement of the Act. Then they are not going to show any substantial consideration in the case of the extension of the term of the settlement as has been pointed out by some honourable members. If after the enforcement of this Bill life-tenure is to be given to all the tenants and the old agreements are to be violated, then the Government should also extend the term of settlement after the passage of the Land Revenue Bill as a mark of their equal consideration for the landlords. But they are not going to do so,

for they are not going to give any other concessions for taking away this right of zamindars. On the other hand, if we take up the case of those tenants who have taken seven-year leases we find that it will certainly be some hardship to them. They will not reap the benefit of life-tenure after the passage of this Bill. They will have to wait for some years to come, and I understand that the percentage of the tenants holding seven-year leases is very great. So, Sir, with your permission, I want to move an amendment to the amendment of my friend Khan Bahadur Maulvi Fasih-ud-din. I want to add "for a period of two years after the enforcement of this Act" at the end of this amendment.

Hon'ble the President : It will be inconsistent with the amendment moved by Khan Bahadur Maulvi Fasih-ud-din. Where does the honourable member propose to add those words?

Rai Bahadur Lala Mathura Prasad Mehrotra : I want to delete "before the commencement of this" and to add "for a period of two years after the enforcement of this Act."

Hon'ble the President : That will be changing the amendment materially.

Rai Bahadur Lala Mathura Prasad Mehrotra : I want to move this amendment simply because . . .

Hon'ble the President : Do you wish to move it?

Rai Bahadur Lala Mathura Prasad Mehrotra : If you permit.

Hon'ble the President : I cannot permit—the House will have to be asked whether they permit or not, because in my opinion it changes the scope of the amendment considerably. So, if the honourable member wishes he can take the risk of objection being raised.

Rai Bahadur Lala Mathura Prasad Mehrotra : Then I want to move it and take the risk of objection. My object in moving this amendment, rather in bringing this amendment before the House, is . . .

Hon'ble the President : Order, order. The honourable member cannot refer to the amendment if it is not before the House.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : If I intervene in this debate at this stage it is not in my capacity as a member of the United Provinces Government. The views of the Government will be laid before the House by my honourable friend the Finance Member. But I wish to lay a few points before the House as a zamindar in this province. Those who have supported the amendment of Hafiz Hidayat Husain have put forward a point that it breaks or violates the sanctity of private contracts. I am all for respecting the sanctity of such contracts. I am not a lawyer and cannot speak from the legal point of view, but I would like to submit that to me as a layman it looks that—as we are all aware, this House is composed of a majority of zamindars. So this Bill could not have reached this stage without the consent of the zamindar party. And therefore if now it is proposed in this section that the tenants of the seven-year leases should be given statutory rights, it amounts to this, that this Bill asks zamindars that in their generosity and far-sightedness they should give up their rights, they should forego their claims and should release their tenants from these contracts. I do not think that anything is going to be done in an arbitrary manner. It is landlords alone who can decide the fate of the tenants as well as their own.

[Hon'ble Lient. Nawab Muhammad Ahmad Sa'id Khan.]

The second point I would like to lay before the House is the effect if this amendment is carried. The purpose for which this Bill has been brought in this House is to give some relief to tenants. The effect of this amendment would be naturally that there will be a lot of ejectments and perhaps high, if not unreasonable, enhancements, and therefore, as far as the tenants under the seven-year leases are concerned, they will regard this Bill as a curse rather than a blessing. Because it will naturally enough persuade the zamindars to eject them and to enhance rents.

The third point that I would like to submit very briefly is that for good or for evil we have embraced democracy. We have accepted a constitution which is more or less a democratic constitution and with the spread of democracy it is inevitable that privileges of the privileged classes shall be reduced. Well, either we should say that we are against democracy or we should face the natural consequences of a democratic Government.

Rai Bahadur Thakur Mashal Singh: I appreciate the arguments advanced by the zamindar members in favour of this amendment. They have a complaint, and a right complaint, against the Government, that by the issue of an executive order ejectments were disallowed for the last two years. But, for this arbitrary action of the Government the zamindars should not retaliate on their tenants. This Bill has been brought in the Council to confer statutory rights on the tenants. If the tenants under seven-year leases will be deprived of the privilege which is being conferred on other tenants, it will not be just on them. So I simply appeal to the Agra zamindars that they should be more generous and magnanimous to their tenants—they should not be hard on them simply because Government disallowed ejectments for the last two years and has been a bit unjust to them. I would appeal to them that they should now show their magnanimity in the case of these tenants and should not stick to the amendment. And with these few words I will keep myself free to vote.

Lient. Raja Durga Narayan Singh: I regret I have to oppose the amendment moved by my honourable friend Hafiz Hidayat Husain. When this Bill was introduced in this Council I said then in my speech that the time was ripe for the zamindars to show some favour towards their tenants, and if they failed to do so this time, that opportunity of showing such a favour would be lost. The Bill has been introduced to afford fairness of rent and security of tenure to the tenants. If the proposal moved by my friend is passed, it will materially affect the very principles of the Bill. If my zamindar brothers here argue that they have not enough *khudkash* or *sir* land under their cultivation, I, as one, can very safely say that ample provision has been made in the Bill for the zamindars to acquire and extend *khudkash* and *sir* land. The question here is live and let live. We ought to realize that it is our pious duty to help our tenants who solely depend on our mercy, and to give them every facility without injuring our interests. The sympathetic zamindars, I know, Sir, have tried that their tenants should get substantial relief in this Bill. But here if another section of the zamindars presses this motion, they will certainly lose the confidence of their tenants. This I consider very harmful to our zamindar community. We

have to do a lot for our tenants. One thing more I have to say which is very important. We are awaiting the Royal Commission, and if discontentment grows among our tenants, I think there will be a solid ground against granting further concessions to this unfortunate country. With these words I oppose this motion.

Taking all these circumstances into consideration I appeal to my able zamindar brothers not to pass this motion and to allow this concession to their tenants.

Maulvi Muhammad Obaid-ur-Rahman Khan: Sir, this is the first time that I am intervening in the debate since the Agra Tenancy Bill has been introduced in this House. I stand to give my whole-hearted and unconditional support to the amendment which is now before the House, i.e., the amendment moved by Khan Bahadur Hafiz Hidayat Husain. I am sorry that the Hon'ble the Home Member is not here. He has just opposed this amendment. He said that he was not speaking here as a member of the United Provinces Government. But I submit, Sir, that so long as he occupies the present position we cannot regard him as anything but the Home Member in this House. Therefore, whatever he has spoken he has surely done in that capacity. I assure him, Sir, that it is not a question of mercy, but it is a question of principle. Had it been a question of mercy, we the zamindars, who have always been merciful, even whose forefathers have always been merciful, would certainly have shown that mercy to the fullest possible extent. But I want to put one question to the Hon'ble the Finance Member, and it is this. When the question of contracts between the zamindars and the Government comes, he is prepared to attach every sanctity to those contracts. He says:—"How is it possible to extend the term of existing settlements which are settled under contracts for 30 years?" He is not willing at any cost to extend the terms of existing settlements even to 40 years, but when the question of seven-year leases comes, which are legal contracts between the tenants and the zamindars, there comes the question of mercy, there comes the question of democracy, and we are appealed to be democratic, to move with the times and to be far-sighted. I assure the Hon'ble the Finance Member and other members of the Government that we are far-sighted enough; we have read the history of Europe; we have gone through the history of the French Revolution; (A voice:—"Have you read the history of Russia"?) we have studied the history of England; we are aware of the changes which the great world war has brought about; we know how these reforms were granted to this country; and having all these considerations in view we urge that these contracts must have the same sanctity attached to them as to the contracts between the zamindars and the Government is attached. When we had given land to these tenants it was on the specific condition that they were to enjoy it for seven years only. We were quite legal in doing so. What, after all, is the area—only one million acres out of 31 million acres: is it a very large area? Those who have not abided by law are to be granted certain privilege. They may ask their non-occupancy tenants not to take the plough and bullocks to those fields which have not been given to them under any lease. But those people who have abided by law are to be deprived of their legitimate privileges. Is it fair? How far are we to show any regard for the laws which are changing every day? This means that we are forced not to show any regard to these laws. Is it

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fair, Sir? I appeal to the Government, and I hope that they will give their full consideration to this point. As well I appeal to the House to give their thorough consideration to this problem. I may assure the House that we the zamindars want to be just, we want to be moderate, and we want to be broad minded; but we submit that the principles that are observed in one case must be observed in other similar cases also. So far as we know, Bonaparte was responsible for changing his laws every day since 1875. What was the result of that? There was chaos. If you change this principle every day, certainly I fear that such results may not follow here also. Sir, we must be taught to respect the laws and to abide by the laws, but not to disrespect them, rather not to disregard them. I may say that the poor zamindars who are opposed here both by the Government and the so-called representatives of the tenants are in a very precarious condition. I assure you, Sir, that we the zamindars represent here the zamindars as well as the tenants. We have due regard to the feelings of the tenants also. Moreover, all of us are anxious to see ourselves again in a majority in this House. When it is so, how can we return again in a majority unless and until we show every respect for their rights. Besides I may say that unless and until our tenants are happy, unless and until they are prosperous, we cannot live as zamindars and we cannot be prosperous. We cannot be happy by ruining them. We can be happy and prosperous only by keeping them prosperous and by giving them as much appropriate security as possible. I assure you, Sir, that these tenants who have been called non-occupancy tenants have been cultivating their lands for generation after generation in my district and in the district of the Hon'ble the Home Member. What will happen even if this amendment is carried? I assure the House that more than ninety per cent. of the present tenants will certainly have the very holdings which they are now cultivating. We are not going to eject them. I assure the House that they will never be ejected. But what we want is that tenants must know that the lease which we have granted to them is only for seven years, and after that term we have every right to take away the land from them and to give it to whomsoever we may please. I assure the House that we will use this right only in extreme cases. We will not be certainly brutal. We are also human beings and we do know how to deal with our tenants. We have been dealing with them for centuries and we will probably continue to deal with them for centuries to come. There have been many changes in the constitution; there have been many changes in the Governments, but the zamindars still exist and I hope they will continue to exist in future also. In these circumstances, I request this honourable House to give its full and thorough consideration to this problem and not to be prejudiced against the interests of any party, but to see whether there is any force in our arguments and whether our amendment is based on any principle. If it is so, I appeal to the honourable members of this House to support it. Otherwise they may throw it out, for which I shall not have the least complaint. With these words I resume my seat.

Pandit Govind Ballabh Pant: The speeches that have been delivered so far convince me that the amendment has been moved not out of any prejudice, not out of any interested motives, but because the members

who have moved and supported it are intellectually satisfied that it is the right thing to do. That encourages a spirit of optimism in me, and I feel that it is after all a question in which we are all open to argument. We are prepared to listen to each other and to find out whether the amendment on its merits should or should not be supported. I assure the honourable members of this House . . .

Hon'ble the President: There are two amendments before the House.

Pandit Govind Ballabh Pant: I take both of them in the same class. I assure the honourable members of this House that having given very careful consideration, not unmingled with respect to everything that has fallen from other quarters, we yet remain unconvinced, and that is the reason why we adhere to the provisions of this Bill as it stands. It seems to me that the opposition is not because it affects their interests as Maulvi Obaid-ur-Rahman has stated, but because my friends, representing as they do the vested interests in the country to a larger scale and to a larger extent than we do, are naturally anxious to uphold the sanctity and dignity of law. To that extent they are entitled to claim a greater regard for law than others who are not as luckily placed as they are. But I for one will appeal to their generosity and ask them to give up their wrong notions about the sanctity of law. Laws may come and laws may go, but man cannot be made and unmade by us, and after all life is higher and more comprehensive than logic.

Coming to the facts, do we really find that this provision is contrary to law or that we are setting up a dangerous precedent, or that we are outrageously unfair to those who have been very generous to the tenants? I for one am prepared to give an emphatic "No" as an answer to every one of these questions. Look to the scheme of the Act. It is very simple. Under it the *khudkasht* possession of a proprietor, irrespective of the period for which he has held it, whether it be one, two or twenty years, will become his *sir*. In regard to the non-occupancy area, irrespective of whether a non-occupancy tenant has held it for a year or two or for eleven years, he will acquire the statutory right in that area. Now, take the case of a person who has cultivated the land continuously for eleven years. He is entitled to come forward and say that if the present law had not been introduced, he would have remained in possession of his land for a year more and thus acquired occupancy rights in it. Under the existing law therefore he is being deprived of acquiring a right, which would have normally accrued to him after a year.

Now, let us see whether those persons who have been given leases are doing greater good to others than to themselves, and in this connexion I will refer honourable members to a few statistics. It is well-known that leases are very common in the Meerut division, and if we look at the revenue returns rather closely, we find that leases go down as we go from west to east. The reason is plain enough. Wherever land is valuable, they have agreed to give leases for seven years, and I am satisfied that there has been an enhancement in the rent paid by a tenant whenever a lease has not been renewed. Has there been the usual enhancement when a tenant has not been allowed to hold land year after year for a period exceeding seven years? The

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point is that every new lease has generally been the result of an enhancement of rent, and so to say that the zamindars have lost while the tenants have gained is wrong. Then, I am inclined to think that during the last seven years the tendency has been in the direction of reducing the rents. Rents vary according to the prices of food-grains. They were high some years ago, but now they are falling, and they are bound to fall still further in years to come unless some adventitious circumstances intervene. In the circumstances, I fail to see how any serious injury will be done to the zamindars.

There is one other point which I wish to bring to the notice of the House.

There is a strange coincidence that wherever the zamindars have given leases, they have held a considerable area as *sir* and *khudkash*, while, on the other hand, the tenants have not a very small area in their possession over which they have acquired occupancy rights by more than twelve years' possession. For example, in the Meerut division it will be found that the area, over which occupancy rights owing to twelve years' possession can be acquired, comes to 3 per cent., while the area which is under leases comes to 10 per cent. and the occupancy area amounts to about 30 per cent. only. If you go to districts of other divisions, for example Aligarh, you find that the area which has been held for more than twelve years is about 10 per cent., but the area that has been held under leases is 5 per cent. Here you will see that the zamindars have allowed a larger area to lapse into occupancy than they have done in the Meerut division where they have given more leases. If you go to the Rohilkhand division you will find that the lease area comes to only 3 per cent. and the area over which occupancy rights have been acquired by twelve years' possession is 18 per cent. Similarly, if you go to the Allahabad division you find that the lease area comes to one per cent. and the area over which occupancy right has been acquired during the last twelve years is 20 per cent. In Bundelkhand the lease area is half per cent. and the occupancy area that has increased during the last twelve years is 30 per cent. The inference is therefore irresistible and conclusive that wherever people have given leases to their tenants they have prevented a considerable area from acquiring the status of occupancy tenancy. They have placed under their control a much larger area than has been done by other zamindars in other divisions. I ask the honourable members whether it is fair and proper that those persons who have been so generous and fair to their tenants that they have allowed them to acquire occupancy rights over a considerable acreage should be penalized and should be prevented from even touching those tenants who have held the land for one year and no more, while those who have during the last twelve and fifteen years so dealt with their lands that there has been practically no increase in the occupancy area should be given further privileges? It seems to me quite illogical to argue that you are penalizing the good and the better-minded people, while you are giving concessions to the more calculating. I submit that the contention that has been put forward again and again that we are penalizing the good men is absolutely wrong. I will illustrate this by referring

to the district of my honourable friend from Bulandshahr. There, as many as 117,000 acres are held under leases and the area in which occupancy right has been allowed to accrue is 19,000 acres. Now, take the reverse case of another district. I will take Shahjahanpur. Here the area held under leases is 9,000 and the area which has been allowed to acquire occupancy rights is 174,000. You will find similar glaring contrasts if you compare the figures of other districts. From this I am driven to the conclusion that the argument of penalizing anyone is absolutely wrong and baseless. Now I go further and refer to the logic of the argument. What is after all the effect of conferring statutory rights? We are practically, taking the average length of life, giving twenty years' lease to a non-occupancy tenant. I am fortified in this argument by the figures of the area held by heirs of statutory tenants in Oudh. That also shows that it is practically twenty years. So it is twenty years' lease that is being conferred on non occupancy tenants. Now let us assume for a moment that there is a tenant whom we have admitted this year and who has held the land for one year. Now there is another tenant who was given a lease two years ago for seven years. You will see the marvellous contrast between the two and this will again expose the hollowness of the argument that is being advanced. In the case of the tenant who has just been admitted the zamindar is entitled to turn him out to-day. But by conferring statutory rights on him you are preventing the zamindar from turning him out and appropriating his holding for the next twenty years. In the case of a lease-holder, suppose he holds the lease for seven years, the zamindar cannot turn him out, he cannot touch him, for seven years. By conferring statutory rights you are only preventing him from turning out the tenant for the next ten or twelve years. If he is already bound for seven years, where is the logic? I have always held, Sir, as a man who has spent some time in the school of thought to which Dr. Ganesh Prasad belongs, that the bigger is always bigger than the lesser. I hold that twenty is bigger than twelve and I hold also that ten is larger than five, but the argument is that you can coerce people for twenty years but you cannot coerce them for ten or five years. That seems to me unintelligible, and I am not able to follow the logic of it. So, Sir, if the principle of life-tenancy is not acceptable, drop it. That is something which is intelligible. I submit that the arguments that have been advanced have not been able to satisfy me and it is on this ground that I am unable to support the amendment.

Then, we are told that we are giving retrospective effect to law. Well, the clause that was read out by the honourable member for Budaun indicated that the legislature has the power to give retrospective effect to law, for otherwise there would be no use in having anything like this. But in this case are we really giving retrospective effect? What is the meaning of giving retrospective effect? Are we trying that the seven years' leases should be declared as having been invalid, prior to the commencement of this Act. But here it is, that so far as the duration of this lease between the date of their execution and the passage of this Act is concerned, they are left intact, they are left as if nobody is touching them. Are we not encroaching upon the rights of other zamindars in the same way as we are encroaching upon the rights of these givers? In the case of those who had got seven years' leases, the only undertaking that the legislature had ever given was in the Act of 1901 to the effect that the persons who had seven years'

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leases would not get occupancy rights if they held possession continuously for twelve years; similarly, that persons who had continued in possession for eleven years and no more, would not get occupancy rights. On the one hand, the legislature says that the man may be entitled to remain in possession for the rest of his life, and in the other case it says, whether you have given a lease or not, the man would be entitled to possession for a fixed period. So where is the inroad more serious in one case than the other. Where is the dangerous precedent in this Bill which makes it so very ferocious and dreadful and in every way fatal to the further growth of constitutional government and representative government? I personally think that if we do not adopt this, we are setting up a dangerous precedent, and it is this, that persons would be loth to enter into any contracts lest the legislature may in its wisdom at any time find it necessary, expedient and desirable to alter it. That I submit is a very dangerous precedent. After all, whatever is done by the legislature, is supposed to be done by those who are the representatives of the people sitting in the Council. Of course, I am not taking into account the present sham constitution, but taking the realities of representative government as it is, the members sitting in the House represent the people outside and whatever they do is supposed to be done by mutual agreement. Is it not open to a zamindar and a tenant who have come to an understanding to do a certain thing, to violate that contract by coming to another understanding tomorrow? So if you represent the zamindars and tenants in this House today and we find that a certain further step is necessary and we agree to change the law which we have entered into in the light of the changed circumstances and we feel it is desirable to do so, a private individual may at any time find it to be desirable in the interest of the public good and the protection of public interest to reverse that decision. That would be a dangerous precedent and I would ask the House not to commit itself to it by being led away by the plausible arguments which have been put forth in this connexion. I will not deal with the question in an academic spirit. I appeal to the generosity of the honourable members sitting here that whatever we do in this Bill, whether we succeed or fail, it is my wish that it may produce some salutary results, whatever comes out of it may go out with the best of spirit of all those who are sitting here and if we feel that in the interest of those whom we represent here and whose interests we have to watch a thing is desirable, let us not be deterred by any false notions.

Hon'ble Sir Sam O'Donnell: There are two amendments before the Council and they differ in certain respects. As I understand the amendment moved by Khan Bahadur Hafiz Hidayat Husain, this will apply not only to leases before the commencement of the Act, but also to any lease executed after the Act. I hardly think that the honourable member intended that. If he does, then his amendment is still more serious than that moved by Khan Bahadur Maulvi Fasih-ud-din. If not, then I cannot think that the amendment moved by Khan Bahadur Maulvi Fasih-ud-din is an improvement, because it applies not only to seven years' leases, but also to leases for five years or shorter periods. However that may be, both amendments are in my judgement open to serious objections. Both make most serious inroads on the provisions of this Bill. There are more than one million acres held by tenants on

seven-year leases. The area so held indeed varies from district to district. It is very large however in a number of districts in this province. In Bulandshahr 40 per cent. of the total non-occupancy area is held by such tenants. In Aligarh 33 per cent. is so held; in Basti 40 per cent., and in Gorakhpur 25 per cent. All the tenants in this large area of over a million acres will be liable, if this amendment is carried, to be ejected unless they agree to whatever arbitrary terms may be imposed, by the zamindar. It is true that, even under the existing law, a tenant can contest an ejectment if the object of the ejectment is the enhancement of rent. But that provision is a very ineffective protection and it is because it is a very ineffective protection that this amendment has been moved. And on what grounds can this amendment, which will expose hundreds of thousands of tenants to arbitrary ejectment, be justified? Two grounds have been advanced. One is that the landlords concerned are good landlords. I agree that there are some admirably managed estates, the tenants of which hold on seven years leases, but I cannot agree that that applied to all such estates. There are, I fear, many such estates of which it cannot be said that they are run on lines conducive to the prosperity of the tenant. And, Sir, is it not precisely the good landlords who should welcome a provision which will be to the benefit of the tenants?

Then, the second argument is the sanctity of contracts. The days have long gone by since the sanctity of contracts could be appealed to as a conclusive argument. In this country and in every other country, the legislature has again and again interfered with contracts. We have done so in these provinces in the Act of 1886, in Act II of 1901, and in the Oudh Rent Act and, Pandit Govind Ballabh Pant reminded us the other day that in other spheres also the legislature has not hesitated to interfere in the public interest. I am reminded of our decision regarding the term of the existing settlement. I do not propose, of course, to enter into any lengthy discussion of that point, I will merely say this, that if we did come to the conclusion that the term of the current settlements should not be extended it was because there was no public interest which would justify extension. And it is precisely because this amendment is opposed to public interests that we oppose it.

Then, Sir, if the sanctity of contracts is to be appealed to, what about the ordinary non-occupancy tenants who hold from year to year. Do they not hold under agreements express or implied for a single year? Yet it is not suggested that they should not become statutory tenants. The man who has held for three or six months or a year is to become a statutory tenant. The man who has held for seven, fourteen or twenty-one years is to be ejected. On what principle can that be defended? Moreover, what is the object? It is said that the interests of the landlords will suffer. There is no reason I believe to suppose that the rents of these tenants are not reasonably high. I believe that these rents have been more regularly enhanced than the rents of the ordinary non-occupancy tenants. If the rent is inadequate, will it not be open to the landlord to apply to the court for a reasonable enhancement?

Members of this Council to whatever class they belong, are not here as the representatives of a class; they are here as the representatives of the community. By all means, stand up for the just interest of the class to which you belong if those interests are threatened. But do not on the ground of any abstract principle, which has long ceased to be

[Hon'ble Sir Sam O'Donnell.]

regarded as sacrosanct by any legislature, do not on that ground or any other ground be oblivious also of the interests of the class to which you do not belong. I cannot believe that if the Council accepts this amendment, it will redound to its credit for even-handed justice and enlightenment, and I earnestly appeal to the Council to reject it.

Khan Bahadur Maulvi Muhammad Fasl-ur-Rahman Khan : I came to this Chamber with an open mind. I listened very carefully to the arguments advanced by my friend Mr. Nanak Chand, and to the appeal made by the Hon'ble the Home Member. I also gave my most serious thought to the speeches delivered by the Hon'ble the Finance Member and Mr. Pant. Nothing has so much surprised me today as the speech of the distinguished leader of the Swaraj party who is a legal practitioner. Had this speech fallen from the lips of a layman it would not have surprised me in the least. Now, Sir, I will take the arguments of all those speakers one by one. First I take the argument advanced by Mr. Nanak Chand. He gave only two reasons for opposing this amendment. His first reason was that when a tenant who is holding land on a lease of one year only is to become a life tenant, how is it that a tenant who is holding land on a long lease does not become a life-tenant? This argument, Sir, is no argument at all. Probably, my learned friend is unaware of the conditions that prevail in the permanently settled districts. In our province if a landlord makes a default in paying the arrears of revenue his property is not sold at once. In a permanently settled district if the landlord fails to deposit the arrears of revenue on a fixed date his village will be sold forthwith.

Babu Damodar Dass : Oh, no.

Khan Bahadur Maulvi Muhammad Fasl-ur-Rahman Khan : It may not be so in the United Provinces, but in Bengal it is so. How is it, Sir, that the landlords living in this province are treated on a different footing? The reason is simply this. Whose privileges are great must his liabilities be great. Tenants who are holding land on seven-year leases have been enjoying fixity of tenure. It was not possible for their landlords to enhance their rents every year. It was not open to their landlords to make selection among them and to eject undesirable tenants. Certainly these privileges were not enjoyed by non-occupancy tenants. The liabilities of these seven year tenants must be in agreement with their privileges. The second point was that landlords gave out long term leases simply to stop tenants from acquiring occupancy rights. These landlords therefore do not deserve any sympathy. I fail to understand and to appreciate this argument. Probably, my learned friend, was under the impression that seven year leases were granted only to stop the tenants from acquiring occupancy rights. This is not so. There was another alternative open to the landlord to eject that tenant and not to give him any land for one year. In this way it was quite possible for the landlord to stop the tenant from acquiring occupancy rights. So this impression of my learned friend is entirely wrong and is based either on inexperience or misconception. Now coming to the appeal made by the Hon'ble the Home Member I might remark that where argument fails an appeal is made to the sentiment of the members of this House. This is certainly a weak man's last resort. We are not sitting here as

members of a charitable society. We are sitting here as members of legislature. We ought to be reasonable; we ought to be equitable and we ought to be legal. Now, Sir, coming to the arguments advanced by the Hon'ble the Finance Member I will say that he opposed the amendment on two grounds. His first ground was that land held under seven-year leases totals one million acres, and therefore if the amendment of Haffz Hidayat Husain is accepted by this House the tenants will be deprived of the benefits of life-tenancy in a considerable area. I do not think this argument will be accepted by this House. We must base our laws either on equity or on principles of jurisprudence or on commonsense. We must not base our statutes simply on principles of charity. We cannot take into consideration what the effect of that law will be. Our laws should not create invidious distinction. No doubt one million acres is certainly a very high figure, but when you compare that figure with the total number of acres in the whole province, you will really come to the conclusion that it is only a very small percentage. My friend Mr. Obaid-ur-Rahman Khan has just remarked that the total area under cultivation is 31 million acres. So out of 31 million acres we are dealing with only one million acres which is certainly a very small percentage. The Hon'ble the Finance Member next tried to refute the argument that was advanced by Rai Sahib Lala Jagdish Prasad that Government was not prepared to extend the present term of settlement, but in my opinion, he has failed in his attempt. He took shelter under a very wide term 'grounds of public policy.' When you have a very strong argument to meet, it is very easy to say 'it is opposed to public policy or something like that.' This is a very common term and is often used by good speaker- and orators and I admit that the Hon'ble the Finance Member is an orator and consequently he took shelter under that term. He said that if the Government had come to the conclusion that no extension should be allowed in the present term of settlement, it was only on public grounds. He did not, however explain those grounds. How is it that one contract is defeated on public grounds and the other contract is respected on those very grounds? That is certainly not intelligible to the mind of a person who carries a sound head on his shoulders.

Now, Sir, coming to the speech of my honourable friend Pandit Govind Ballabh Pant, I will say that had the Council been a debating society and had I been the judge of the best speaker, I would certainly have awarded the prize to Mr. Pant. He couched his thoughts in beautiful language, but if you examine those thoughts you will certainly find that they do not become him and that those thoughts do not do credit certainly to a leader of such an important body as that of the Swarajists. I will say that the logic of those honourable members who opposed the amendment is the logic of that person who once said "man is an animal; wolf is an animal—therefore man is also a wolf." Now I will come to the reasons which can be advanced in support of the amendment and then I will finish my speech.

Babu Mohan Lal Saksena: What about the arguments of Mr. Pant?

Khan Bahadur Maulvi Fazl-ur-Rahman Khan: Mr. Pant said in his speech that our laws must be reasonable and that no sanctity was attached to contracts. He also pointed out that the legislature is authorized to give retrospective effect to any provision of the Act.

[Khan Bahadur Maulvi Fazl-ur-Rahman Khan.]

Certainly, I agree with him that the legislature has power to give retrospective effect to any provision of the law it likes. But I will not go so far as to say that the legislature should do so without giving the matter its most serious thought. Generally, our laws ought to be prospective and not retrospective. Whenever it is in the interests of the public or on any reasonable or equitable ground to give any provision of the law retrospective effect, then, certainly, the legislature can do so. Hafiz Hidayat Husain's proposal is very reasonable and sound. In this particular matter I am of opinion that retrospective effect is uncalled for and will harm the parties concerned. I do not agree with Mr. Pant when he says that no sanctity is attached to old contracts; a valid contract must command respect. Now I will refute Mr. Pant's argument by citing a Privy Council ruling. Before 1908 it was the common belief of everybody that 60 years was the term enjoined by the Limitation Act for suits on mortgages. In 1908 the Privy Council gave a ruling and fixed the term at 12 years only. The Limitation Act had to be revised in consequence of that ruling. In the present Limitation Act you will find that probably the last section gives power to all those mortgagees whose mortgages were older than 12 years to file their suits within the next two years. The effect of the Privy Council ruling would have been disastrous for money lenders who relying on High Court rulings had allowed their mortgages to become older than twelve years. The Imperial Legislature came to their help at once and allowed them a period of two years for suits on such mortgages. If such a course was adopted by the Indian Legislature to save money lenders, our Council should accept the amendment to redress a legitimate grievance of landlords. Certainly, whenever you have an important measure before you, you are not justified in giving it a retrospective effect. Our Government passes a law one day, it invites people to do a certain thing, it encourages a certain state of affairs, and when people having confidence in its laws, do those acts and grant those contracts, enter into those agreements, then all of a sudden the Government brings forth a fresh law and by a stroke of the pen nullifies all those agreements and contracts. Will the Hon'ble the Finance Member tell me if such laws would do credit to any civilized country? If he remains silent, I will say a very emphatic "No."

Now, Sir, I will advance one or two arguments in support of my friend's amendment and then I will finish. It is admitted by almost every member who opposed the amendment that only good landlords gave out these leases, because if a landlord gives a long term lease he is debarred from turning out his tenant; at the same he is debarred from enhancing his rent. Seven years' leases were encouraged by the present Act and good landlords only accepted them. It is unfair to punish these landlords. My second argument is that it is imperative for every succeeding law to respect contracts and agreements entered into under the outgoing law. My third argument in support of the amendment is that if a landlord goes to the court and files a suit for the ejectment of his tenant before the expiry of the term, of the lease his suit is bound to fail. On the one hand, the contract is binding on the landlord, but as far as the conferment of statutory rights is concerned, the contract is not binding on the

tenant. Because rights will accrue to the tenants before the expiry of the term. This state of affairs is unjust and unfair. My last point is that the Hon'ble the Finance Member has said in his argument that it is open to the landlord to apply for the enhancement of that tenant's rent. This argument, Sir, was wrong because it is not open to any landlord to apply for the enhancement of the rent of a statutory tenant unless and until he waits for thirteen or twenty years. I mean to say for a considerable time. I refer him to clauses 50, 51, 52 53 and 54 of the Bill. Under these circumstances I am strongly of opinion that a very strong case has been made out in favour of the amendment and I have every hope that the amendment will find favour with this House.

Raja Bahadur Brij Narayan Rai :

جناب والا —

مجھے بھی کچھ گزارش کرنے کی ضرورت ہے۔ آج جو تقریریں ہوئی ہیں وہ جس قابلیت اور عقلمندانہ طریقہ سے ہوئی ہیں میں اُس کا عشرِ عشر بی بی نہیں کہہ سکتا ہوں۔ میری تقریر ان تقریروں کے سامنے آفتاب کو چراغ دکھانا ہے۔ میں یہ بھی عرض کر دینا چاہتا ہوں کہ جہاں تک تقریریں کم ہونگی اور مختصر ہونگی اُنہی ہی ہمارے لیئے زیادہ مفید ہو سکتا ہے اس کی وجہ یہ ہے کہ اگر ہم لوگ متحدہ کے پہلے اس Tenancy Bill کو نہ پاس کر سکیں تو ہم لوگوں کی صورت متحدہ ہوجائیگی (تہقہ)۔ لکھنؤ میں جو میں نے تقریر کی تھی اُس وقت میں میرے بہت سے زمیندار دوستوں نے بھی تقریریں کی تھیں اُس وقت اُن صاحبان نے یہ دیکھ لیا تھا کہ کاشتکاروں کے ساتھ رعایتیں کرنا چاہیئے چونکہ زمانہ کا رنگ بدل رہا ہے زمانہ کی حالت دوسری ہو رہی ہے اب ترقی کا زمانہ آ رہا ہے اب ہم لوگوں کو کاشتکاروں کو حقوق دینے چاہئیں۔ اب اس وقت دیکھنا یہ ہے کہ ایک ترازو ہے ایک پلے پر زمینداروں کے حقوق ہیں اور دوسرے پلے پر کاشتکاروں کے حقوق ہیں یہ دونوں پلے برابر ہیں لیکن اگر ان دونوں میں سے کاشتکاروں کے حقوق کے پلے میں سے اگر کچھ حقوق لے لیئے جائیں گے تو زمینداروں کا پلہ بھاری ہوجائیگا اور اگر زمینداروں کے پلے میں سے کچھ حقوق لے لیئے جائیں گے تو کاشتکاروں کا پلہ بھاری ہوجائیگا۔ لیکن جبکہ ہم لوگوں نے بارہا یہ تقریریں کی ہیں کہ کاشتکاروں کو فائدہ پہنچانا چاہیئے تو ایسی حالت میں کوئی وجہ نہیں ہے کہ ہم کاشتکاروں کو فائدہ نہ پہنچائیں۔ میری اس تقریر بہت سے میرے دوست شیم شیم چلائینگے۔ لیکن *

سچ کورا ہوتا ہے۔ جبکہ ہم لوگ حق حینِ حیاتی دینے کے لیئے تیار ہوئے ہیں اُس وقت اگر یہ پتہ کا مسئلہ پیش کیا جاتا تو بہت سے میرے زمینداران دوست ایسے ہیں کہ جنہوں نے گاؤں کے گاؤں پتے پر لکھا لیئے ہوتے۔ ایسی حالت میں کاشتکاروں کے پتے کا سوال جیسا کہ اب رکھا جا رہا ہے اُس کا نتیجہ یہ ہوگا کہ وہ لوگ حینِ حیاتی ہوجائیں گے۔ ہمیشہ میں نے زمینداروں کا ساتھ دیا ہے اور میں نے وعدہ کیا ہے کہ زمینداروں کا ساتھ دوں گا۔ لیکن میں زمینداران سے دست بستہ گزارش کرتا ہوں کہ وہ اس معاملہ میں نہایت فیاضی سے کام لیں

[Haja Bahadur Brij Narayan Rai.]

کیونکہ میں نے جو تقریر لکھنؤ میں کی تھی اُس میں صاف ظاہر کر دیا تھا کہ اگر
کاشتکاران مت گئے تو ہم بھی مت جائینگے۔ میں نہایت ادب سے گزارش کرتا
ہوں کہ اِس معاملہ میں زمیندار صاحبان خاص فیاضی سے کام لیں *

Pandit Brijnandan Prasad Misra : I move for the closure of the debate.

Question, that the question be now put, put and agreed to.

Khan Bahadur Hafiz Hidayat Husain : I do not think that I should take more time of the Council than is necessary in winding up the debate because the arguments that have been put forward in opposition to my amendment have been met by previous speakers. I will refer however to one or two points that need attention. In the beginning the Hon'ble the Finance Member has doubted if my amendment also refers to leases given after the Bill is passed and becomes law. I want to make it plain that my amendment only covers those leases that were granted before the commencement of this Act.

Hon'ble the President : It does not say so.

Khan Bahadur Hafiz Hidayat Husain : It is clear from the context. Clause (c) says after the commencement of this Act and not before. My amendment refers only to leases that were granted before the commencement of this Act.

Hon'ble the President : If that be the case your only objection is to the words "or less" in the amendment of Khan Bahadur Maulvi Fasih-ud-din and if those words are deleted then you would accept that amendment.

Khan Bahadur Hafiz Hidayat Husain : Certainly.

Khan Bahadur Maulvi Fasih-ud-din : I do not want to press my amendment.

The amendment of Khan Bahadur Maulvi Fasih-ud-din by leave withdrawn.

Hon'ble the President : Will Khan Bahadur Hafiz Hidayat Husain make this clear in his amendment that he refers to leases before the commencement of this Act and not after.

Pandit Nanak Ohand : A point of order.

Hon'ble the President : There is no question of point of order. I am simply putting a question to Hafiz Hidayat Husain.

Khan Bahadur Hafiz Hidayat Husain : I will make my amendment read as follows :—

Provided that no tenant holding under a lease of seven years or more granted before the commencement of this Act will be allowed to become statutory tenant....."

Hon'ble the President : Khan Bahadur Hafiz Hidayat Husain proposes to move that between the words "more" and "will" the words

"granted before the commencement of this Act" be inserted. He wants it to be done in order to make his position quite clear and to make the amendment more intelligible.

Pandit Nanak Ohand : My point of order was . . .

Hon'ble the President : Was or is ?

Pandit Nanak Ohand : Was and is as to whether members are allowed to amend their own amendments at this stage when the motion for closure has been accepted.

Hon'ble the President : It is not a question of amending his own motion. It is a question of making his position clear. As the question cropped up and the amendment was a little vague, I allowed him to make his position clear. I hope the House has no objection to this modification in the amendment originally proposed.

Khan Bahadur Hafiz Hidayat Husain : My amendment is: "Provided that no tenant holding under lease of seven years' or more granted before the commencement of this Act will be allowed to become a statutory tenant till his lease has expired and the tenant has been re-admitted to the holding." I have made my position clear. Some sentimental objections have been raised, but we lawyers do not care to answer arguments based on sentiments. I will, however, answer the Hon'ble the Home Member in his own strain when he appeals to the generosity and farsightedness of the zamindars to grant these rights. Did the Hon'ble the Home Member as a member of the Government ever appeal to the generosity and the farsightedness of Government to remit sometimes a portion of its land revenue to the poor zamindars. If the Government in its farsightedness and generosity has never done this why ask the zamindars to forego their rights under the law. I was very much impressed by the eloquence of the Hon'ble the Finance Member when he said that members of this House must agree to care for larger interests. Sir, I have seen the table that has been drawn up by the leader of the Swaraj party and to which he has referred in his speech and I find that the constituency I represent, has got the least area held under long-term leases and more area held by other secured tenants. Therefore in moving my amendment, I do represent larger interests; interests outside my constituency need as much to be protected as those in my constituency. Now, Sir, the situation is that if we put aside sentimental arguments and appeals made to us—there is nothing left to reply. I would only ask, are the tenants entitled to this privilege? I think not. And if not I do not think that sentimental arguments should prevail. I hope, therefore, that my amendment will be accepted.

Hon'ble Sir Sam O'Donnell : I have only one remark to make. The honourable member who has just spoken referred to the question of remission of revenue. He seems to suggest that Government was making no concession as regards land revenue. Well, Sir, every member of the Council I suppose has seen the Select Committee's report on the Land Revenue Bill, and I think they must acknowledge that it does contain generous concessions as regards the pitch of assessment and the term of settlement.

Question put, that the above proviso be inserted:—

The House divided Ayes, 47; Nos. 50.

Ayes.

Raja Muhammad E'jaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Lala Kishan Lal.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh
Rai Sahib Chaudhri Sheoraj Singh.
Lala rabu Lal
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Khatagjit Misra.
Raja Suryopal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Raja Shankar Sahai.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Sahi
Rao Sahib Abdul Hameed Khan.

Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Sheikh Masud-us-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Maulvi Abdul Hakim.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Hussain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Hussain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmad Ali Khan Alvi.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Rai Bahadur Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Shambhu Dayal
Lieut. Raja Shaikh Imtiaz Rasul Khan.
Raja Jagannath Bakhs Singh.

Nos.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan,
Mr. G. B. Lambert,
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. E. A. Lane.
Mr. E. L. Yorke.
Mr. E. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. B. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Sakseena.
Babu Damodar Das.

Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Bhagwat Narayan Bhargava.
Thakur Har Prasad Singh.
Thakur Kesava Chandra Singh Chaudhri.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhy.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant
Pandit Har Govind Pant.
Mr. Mukaudi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Rai Bahadur Thakur Maashal Singh.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Khan Bahadur Maulvi Fasih-ud-din: I move, Sir, that the following be added "Provided that no statutory right shall accrue in case of *pahikash* tenants." Sir, it is admitted on all hands that *pahikash* cultivation is not a blessing, but an evil, and this for the simple reason that a tenant who does not reside in the village does not take sufficient interest in the cultivation of that village. He is not in a position to manure the fields sufficiently well to improve them. He generally does

not indulge in improvement of agriculture. For this very reason *pahikash* cultivation is to be discouraged, and it is for this reason I believe that in the Oudh Rent Act *pahikash* tenants are excluded from acquiring statutory rights. I think that this amendment of mine is very reasonable. We should not be treated worse than the Oudh zamindars are, and because this principle has been admitted in the Oudh Rent Act I see no reason why we should not get the same benefit as the Oudh zamindars have got. With these few words I commend the amendment to the House.

Thakur Sadho Singh : I am sorry I cannot support the amendment before the House. Similar arguments can be advanced in the case of bigger tenants and even bigger zamindars in whose case much larger interests are at stake, and I would advise the House to reject the amendment. *Pahikash* tenants are not less useful agriculturists as those of any other class.

Rai Bahadur Thakur Hanuman Singh : I fail to agree with my friend Khan Bahadur Maulvi Fasih-ud-din in that *pahikash* tenants do not look after their cultivation properly and do not do what a tenant ought to do in manuring his fields and increasing the productivity of the soil. There are many *pahikash* tenants whose livelihood depends on their *pahikash*. They have been holding lands from a long time, and if these lands be taken away from them it will be very hard for them to maintain themselves. There is everywhere a very great demand for land, and it becomes very difficult for a tenant if he is ejected from his holding to get other land for his cultivation. Therefore it will be doing a great injustice to those tenants whose livelihood depends upon *pahikash* to introduce a section into this Act to the effect that *pahikash* tenants should not get statutory rights. No doubt in the Oudh Rent Act there exists a section under which a landlord can eject his *pahikash* tenant, but on that account it does not follow that the same sort of section should find place in this Act also. I remember that there is a great complaint amongst the tenantry of Oudh on account of that section. Where the taluqdars have taken steps to eject their tenants under that section, the tenants' lot has become very hard, and I am sure that the Government would have received reports from district officers on that account. It may be that district officers might have recommended to Government the repeal of that section, so that the right of *pahikash* tenants may remain secure; and it may not be in the power of the landlord to eject a *pahikash* tenant whenever he chooses. With these words I oppose the amendment.

Hon'ble Sir Sam O'Donnell : I hope that my honourable friend will not press this amendment. I am quite sure it will work most unevenly and unjustly. I take it that he has got the idea of this amendment from the Oudh Rent Act. If honourable members will refer to that Act they will see that it does not say that a *pahikash* tenant is not a statutory tenant. It says that a landlord may eject a *pahikash* tenant subject to a variety of conditions. In the first place it says :—" If the holding is situated in a village in which he does not ordinarily reside and the landlord does not possess any proprietary or under-proprietary right in the village in which the tenant ordinarily resides, or the landlord desires to let the holding to a tenant who ordinarily resides in the village in which the holding is situated." Then it goes on to say :—" No court shall take cognizance of a suit for

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ejection on these grounds unless the suit is for ejection of a tenant on the expiration of this statutory period." Then again it goes on to say:—"If the tenant is not ejected on the expiration of his statutory period he shall be deemed to be admitted to the occupation of the holding." Then again it says:—"If the holding from which the tenant has been ejected is not let from the commencement of the agricultural year next following the date of such ejection to a tenant who ordinarily resides in the village in which the holding is situated, the tenant who has been so ejected shall be entitled to sue for the recovery of the occupancy of holding and for compensation for dispossession."

Therefore, even in the Oudh Rent Act the right of the landlord to eject is subject to a variety of safeguards. Further, it has been found by experience which has been gained since the passing of the Oudh Rent Act that this particular provision has worked unevenly. There are many *pahikash* tenants who actually live nearer their holdings than other tenants. Precisely the same is true in Agra, particularly in canal irrigated tracts. Cultivation by *pahikash* tenants will be often cheaper and more efficient and generally easier to arrange for than cultivation by resident tenants. Therefore, this proposal of Khan Bahadur Maulvi Fasih-ud-din not only goes much beyond the Oudh Rent Act, but it is open, as even the provision in the Oudh Rent Act, to the objection that it works unevenly and unjustly and does not promote good cultivation.

Hon'ble the President : Khan Bahadur Maulvi Fasih-ud-din.

Khan Bahadur Maulvi Fasih-ud-din : Am I to understand, Sir, that the debate is closed?

Hon'ble the President : I have asked you to reply to the debate.

Khan Bahadur Maulvi Fasih-ud-din : It will be my final reply?

Hon'ble the President : Yes.

Khan Bahadur Maulvi Fasih-ud-din : In view of the speech delivered by the Hon'ble the Finance Member I want to say a few words which I never meant should not come in. I meant that the *pahikash* tenant should not acquire statutory rights provided the landlord wants to replace him by a resident tenant. That was my real meaning by putting in this amendment. If you will permit me I can put in that, and then I will reply. I would like to add the following words at the end of the amendment:—"unless the landlord wishes to replace him by a resident tenant."

I am not at all convinced by the arguments advanced by the Hon'ble the Finance Member. I know that the *pahikash* tenant is not defined in the Oudh Rent Act. But at the same time I confess that the statutory tenant is not defined as life-tenant in the Oudh Rent Act. Some of my friends who have studied the Oudh Rent Act carefully and who are famous lawyers have been telling me that it does not follow from the language of the various sections of the Oudh Rent Act that the statutory tenant is necessarily a life-tenant in Oudh. In fact they have gone so far as to say that a statutory tenant is only a tenant for ten years, according to the language of the various sections in the Oudh Rent Act. Statutory period

in the Oudh Rent Act is defined as a period of ten years, and there is absolutely no definition of the statutory tenant in the whole of the Act and nowhere it is said that statutory tenant means life-tenant. However, I do not wish to go beyond the provisions of the Oudh Rent Act. I think it will be but fair that we should be treated on a par with the Oudh zamindars. For this reason, according to the Oudh Rent Act, the Oudh people have got only two per cent. of occupancy tenants and 98 per cent. statutory tenants, while we here have got out of the total holdings, of 52 per cent occupancy tenants and 24 per cent. life-tenants. Therefore while the area of occupancy tenants in the province of Agra preponderates by far, the area of occupancy tenants is infinitesimally small in Oudh. For this reason I think we should not be treated worse than the people of Oudh in this particular respect, especially when we know that *pahikash* is an evil, an admitted evil. Therefore the little amendment that I have made in this clause makes it harmless when I say that unless the zamindar replaces him by a resident tenant, and my amendment will only lead to this.

Hon'ble the President : That amendment is not before the House.

Khan Bahadur Maulvi Fasih-ud-din : With these few words I press my motion to the vote.

Hon'ble Sir Sam O'Donnell : My honourable friend has said that he is informed by his legal adviser that the statutory tenants in Oudh only hold land for ten years. I can only say that I strongly advise him to change his adviser, as I am sure that if he follows his advice he will some day find himself in difficulty.

Then, Sir, it is said that all he wanted was what we have given in Oudh. The Oudh section is entirely different from the amendment which he now puts forward. His proposal is that no *pahikash* tenant under any circumstances whatever is to get statutory rights. There is no such provision in the Oudh Rent Act, and I am sure the Council will recognize that the amendment of the honourable mover is based on no principle and should be rejected.

Khan Bahadur Maulvi Fasih-ud-din : I would refer the honourable member to the bulky report which has been drawn up and printed by the Allahabad zamindars. It has been prepared by several distinguished lawyers and it discusses the subject very thoroughly.

Hon'ble the President : The honourable member had better give the report privately to the Hon'ble the Finance Member.

Question, that the above proviso be inserted, put and negatived.

The Council then adjourned for lunch.

After the recess the Deputy President took the Chair.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : I beg to move that a new proviso be added as follows at the end of clause 19:—

“ Provided, thirdly, that no statutory rights will accrue to a tenant (a) in respect of newly reclaimed land for a period of fourteen years, and (b) in respect of land subject to annual alluvion and diluvion.”

Hon'ble Sir Sam O'Donnell: Sir, would it not be better to take each amendment separately?

Deputy President: Yes. The honourable member should deal with reclaimed land first.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan: Very well I shall do so. The proviso that originally stood in my name is slightly different from what I have just moved. The difference is, however, in the language and not in the substance. My intention in moving this amendment is not to ask for anything new. In the Oudh Rent Act you will find that newly reclaimed land is exempted, though the language is not the same in which I have couched this proviso. Under the Oudh Rent Act a special contract must be entered into between the tenant and the proprietor if the intention of the proprietor is that no statutory rights should accrue in respect of such land. It is only a formality and I attach no importance to that condition. The reasons on which the proviso moved by me is based are quite simple and do not require any lengthy explanation. My first reason is that whenever a land is to be reclaimed, the proprietor is put to a considerable expense. If statutory rights will accrue from the beginning in such land, proprietors will suffer. My second reason is that in respect of newly reclaimed land the tenant will not agree to pay a fair rent. My experience tells me that generally pieces of land are reclaimed at a very low rent, say 2 annas per bigha or 4 annas a bigha. If my amendment will not find favour with this House, the result will be that proprietors will not agree to the reclamation of land because tenants will not be willing to pay high rent and proprietors will not like that statutory rights should accrue at a rent of 2 annas per bigha. For these reasons I am convinced that my amendment is based on sound principles and no honourable member of this House will oppose it. I therefore commend my amendment to the acceptance of this House.

Hon'ble Sir Sam O'Donnell: I would have no objection to taking section 4(3) of the Oudh Rent Act. That does not go quite as far as the honourable member proposes, but I think it meets all the points that he urged in favour of this proposal. It says:—

"Where land not previously cultivated has been or is hereafter let by a landlord to a tenant, either after being reclaimed by or at the expense of the landlord or for the purpose of being reclaimed by the tenant, nothing in this section shall be construed to affect the conditions of any contract relating to that land until fourteen years have elapsed from the date on which the land was first brought under cultivation."

It leaves it open to the landlord and the tenant to arrive at a contract. I think that this proviso should come in clause 8. If my proposal is accepted and you, Sir, allow me to move this amendment when we come to clause 8, I will move it then.

Deputy President: If the honourable mover withdraws his amendment, the Hon'ble the Finance Member will move his amendment to clause 8.

The amendment by leave withdrawn.

Khan Bahadur Maulvi Muhammad Fasil-ur-Rahman Khan: The proviso that stands in my name runs thus :—

“Provided, thirdly, that no statutory right will accrue to a tenant in respect of land subject to annual alluvion and diluvion.”

I beg to move that this proviso be added at the end of this clause. Before proceeding any further I humbly request the House to allow me to delete the word “annual.”

(Permission was given to the deletion of the word “annual.”)

My reasons for moving this amendment are as follows. I think all the members who are present here today are aware that there are pieces of land which lie on either side of rivers. During floods those lands are always under water, and when the water course changes new lands appear there. At times it so happens that 500 bighas of land is left in a village and is fit for cultivation, in other years you will find that instead of 500 bighas there are only 200 bighas. It is very difficult when the water leaves that land to identify the exact holding of a tenant. Suppose there are two tenants, *A* and *B*, holding land to the west of a certain village. Now that area is flooded. When the water leaves that land it will be very difficult to identify where the holding of *A* was and where the holding of *B* was. If my proviso is not adopted by the House the result will be that tenants will be involved in endless litigation and so will the zamindars be. For these reasons I commend it to the acceptance of the House. The House will also note that the land which is subject to alluvion and diluvion is always quinquennially settled. This is an additional reason why statutory rights should not be allowed in such land.

Hon'ble Sir Sam O'Donnell: I think that the honourable member's object can be met by an amendment of a much more suitable character. As his amendment stands, it would apply to all the alluvial mahals. The greater portion of these mahals are really stable cultivation. They lie, of course, alongside the rivers; they are often flooded by the rivers, but the greater portion of them is really land which is cultivated continuously for long periods. It would be unfair to exclude such land merely on the ground that some of the poorer land is occasionally washed away. I imagine that what the honourable member is thinking of is the growing of melons. Now melons are grown on what is really the bed of the river. It is very difficult to give statutory rights on this land as it is very difficult to identify the land from year to year. The amendment I suggest is that for his amendment we substitute “provided that statutory rights shall not accrue in land ordinarily used for melons in the bed of a river.” It certainly seems to me wrong to exclude all the alluvial mahals. I know this from my own experience. Take the district of Allahabad for example. On the other side of the Ganges there are long stretches of land which are cultivated year after year. This amendment will cover all such cases. They are all subject to alluvion and diluvion. There would be no statutory rights in the whole of this area. On the other hand, I agree, of course, that when the land is actually on the bed of the river it is very very hard to say, after the rain has subsided, what field a man has held, and therefore I would substitute my amendment.

Rai Bahadur Thakur Mashal Singh: Do statutory rights accrue to the tenants of alluvial mahals in Oudh?

Hon'ble Sir Sam O'Donnell : I admit that they are excluded there, but I think that there was a slip in the case of Oudh. As I have said, I cannot see any ground of principle for distinguishing alluvial land which is permanently cultivated from other land. That is my point. In fact, there are occupancy rights in these mahals under the Act of 1901, and if occupancy rights can accrue in this land and no difficulty has arisen surely it is reasonable to allow statutory rights in it. I am quite willing to meet what seems to me a valid point made by the honourable mover, namely, that land actually in the bed of the river should be excluded, but I cannot see that there is any justification for the other amendments.

Khan Bahadur Shaikh Masud-uz-Zaman : Is it open to me to ask the Hon'ble the Finance Member about the alluvial and diluvial lands. It has been pointed out that they have staple crop. But may I submit that along the banks of the Jumna the conditions are quite different from what they are along the banks of the Ganges. Along the banks of the Jumna an enormous area is left sometimes with sand which becomes absolutely uncultivable and also becomes very fertile. So unless we have some provision, it will be both to the disadvantage of the tenants as well as the zamindars.

Mr. H. A. Lane : The last speaker said that the conditions along the Jumna are not the same as the conditions along the Ganges. I can claim to have some experience of the conditions along the Jumna having just settled the Muttra district. The conditions along the Jumna are very much the same as they are in any big *khadar*. Along the river close to the stream we generally get a strip of land which is used for melon beds; the land is let out every year and melons are produced. At the end of the rains you will not be able to identify the land, and it is unreasonable that statutory rights should accrue in that land. But above that strip of land along the stream you get a wide area at a very much higher level, and the wide area grows all the crops which are grown in the *rabi* on the *bangar*. It grows wheat, part of it grows sugarcane, sometimes without irrigation. In the villages near Muttra city itself much of the land in this *khadar* area is under vegetables; indeed part of the most valuable land in the Muttra district lies in the *khadar* near the city and in much of it the tenants hold occupancy rights. Surely, it is not reasonable to exclude that land from the area in which statutory rights can accrue. As regards the land on the edge of the river, it has spasmodic and casual cultivation and it is reasonable that statutory rights should not arise, but as regards the main bulk of the alluvial mahals they are absolutely indistinguishable from ordinary *bangar* land in the *rabi* cultivation.

Khan Bahadur Mr. Muhammad Aslam Saifi : Are these lands which are at a distance subject to the action of the river ?

Mr. H. A. Lane : Yes.

Rai Bahadur Thakur Mashal Singh : These alluvial mahals are assessed to revenue after every five years and not after thirty years. They are under quinquennial settlement, and this is one of the reasons that these alluvial mahals have been exempted from the ordinary law of statutory rights accruing in respect of these lands under the Oudh Rent Act. Suppose the stream flows here and this piece of land belongs to me this year. In the rainy season it is possible that it might be cut

away to the other side and the land may belong to another zamindar. So such land must be exempted, and it has been exempted under the Oudh Rent Act after a great deliberation in the select committee and in the Council. I do not think that this amendment is unreasonable, and I hope that the Government will consider twice before it rejects it.

Rai Bahadur Thakur Hanuman Singh: In support of the amendment which has been moved by my honourable friend Khan Bahadur Maulvi Fazl-ur-Rahman Khan, it has been said that in Oudh alluvial lands are exempted and that no tenant can acquire statutory rights in these lands. As the Hon'ble the Finance Member has said, I think it was certainly a mistake to legislate that in alluvial mahals statutory rights cannot accrue. In alluvial mahals there are lands which are fixed-rate tenancies or occupancy tenancies. Previous to this the tenants could acquire occupancy or fixed-rate tenancy rights in such lands. There appears to be no reason why statutory rights should not accrue in them even now. Then, Sir, my friend Thakur Mashal Singh has said that the lands are cut away to the other side and become part of the zamindari of another zamindar. Well, if they become part of another zamindari, then certainly they pass out of the possession of the tenants who held it before, provided they are re-formed on the other side of the river. But then it is on the other side of the river and not on the same side of the river when the possession is changed. Sir, there is another custom and it is supported by law. When any land is formed in front of the holding of an occupancy tenant or of a fixed-rate tenant, the tenant acquires occupancy or fixed-rate tenant's rights in the land which is formed in front of his holding. In the same way I am prepared to say that according to the same law of alluvion and diluvion any land which will be formed in front of the holding of a statutory tenant will become part of the statutory tenant's holding. The landlord will have, as in the case of a fixed-rate holding or of an occupancy holding, the rent enhanced of that holding in front of which that land would be formed. So this amendment should not be allowed. Otherwise it would create great confusion and will give rise to very great litigation.

Khan Bahadur Maulvi Fasih-ud-din: I am afraid that in connexion with this debate the main issues have been rather involved, and I have no hesitation in saying that the speech that has just been delivered by my honourable friend the member for Ballia has made confusion worse confounded. As has been stated by Mr. Lane, there are three kinds of land on the basis of natural division. One is land which is called *bangar* which is saved from the ravages of the river. The other is called *khadar* which is situated on a higher level, and the third is land which is called *tarai*. It is on the bank of the river and is subject to annual alluvion and diluvion. These are three kinds of land, and I do admit that in the middle class of land, namely, *khadar*, the cultivation is rather permanent at times and there are occupancy tenants on that land, but the question before us just at present is that my friend Maulvi Fazl-ur-Rahman Khan wants the tenants of the alluvial mahal exempted from the scheme of life-tenancy. In certain districts *khadar* is included in the alluvial mahal; in others it is not so included. That has been my experience. Well, in some places *khadar* which is saved from the ordinary floods of the river is also included in the alluvial mahal and I think it is wrongly included. The question is whether non-occupancy tenants should get statutory rights in the alluvial mahal

[Khan Bahadur Maulvi Fasih-ud-din.]

or not. I submit here, Sir, that these alluvial mahals are subject to quinquennial settlement for the simple reason that the cultivation in these mahals is unstable as has been pointed out by Rai Bahadur Thakur Mashal Singh, and if any portion of these alluvial mahals is permanently cultivated and is not immediately subject to the floods of the river and if it is included in the alluvial mahal, I should say that it is wrongly included in it and that a revision of the area of such alluvial mahal is absolutely necessary. In common parlance we understand that the alluvial mahal means the mahal in which in ordinary seasons the floods of a particular river do damage and spread over the bulk of the area of that mahal. That is the real significance of the words "alluvial mahal" which is subject to quinquennial settlement. So theoretically the amendment that has been proposed by my honourable friend Maulvi Fazl-ur-Rahman Khan is perfectly correct. The difficulty can be avoided by laying down in this provision, if he agrees to that, that the statutory right should not accrue in the land which is ordinarily subject to the annual floods of a river in ordinary seasons.

Hon'ble Sir Sam O'Donnell: What is meant by "ordinarily subject to"?

Khan Bahadur Maulvi Fasih-ud-din: That is to say that we know the line of floods there in average years, and that is always demarcated in the map.

Hon'ble Sir Sam O'Donnell: All this land is flooded every year.

Khan Bahadur Maulvi Fasih-ud-din: If the land is covered by water every year, then I would certainly press for the acceptance of the amendment of my friend. I only want to exclude those lands which are called *khadar* in which tenants have got permanent rights. But if a land is subject to floods every year, of course the boundaries of the fields are changed and they disappear, and in that case it is very difficult to confer any class of rights on any of the tenants, and as commonly happens tenants exchange their land. Sometimes a tenant is cultivating a particular portion which becomes sandy; the neighbouring land gets richer; he takes it and begins to cultivate it. In that way the question of conferring life-tenancy in a land of this kind will be a very difficult question not only from the point of view of the zamindar, but also from the point of view of practical utility.

Pandit Jhanni Lal Pande: As a person living on the banks of the Jumna I deem it my duty to contradict the statement of Khan Bahadur Shaikh Masud-uz-Zaman. The land on the banks of the Jumna is the land which is cultivated permanently by tenants. There are occupancy tenants in it and a larger portion of it is *sir* of the zamindar which I know that tenants have been cultivating for no less than 40 to 50 years. It is this portion of land where rack-renting is freely resorted to and it is here that we have to safeguard the interests of the tenants. There are two sorts of mahals in this land: one is called *mustagil* and the other is *diwara*. It is only *diwara* mahal which is flooded by the river. Even when the floods are over, this land remains the land of the tenant who occupies it, and I see no reason why the tenant who cultivated it before the floods should not have the same rights after the land is recovered from the floods.

Pandit Nanak Chand : I think Mr. Lane who has been in Bulandshahr district in connexion with the last settlement of Bulandshahr district will hear me out, if need be, when I say that there is a continuous and fairly expansive belt by the river Jumna and there are a number of villages which are entirely situated within the *khadar* and *bangar* area of the river Jumna. I had an opportunity of visiting some of these villages in connexion with the flood relief organization on the occasion of the last disastrous floods in our province. It has been pointed out by some of my friends that this area is flooded every year by water and that the boundary marks disappear altogether.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : Is that belt quinquennially settled?

Pandit Nanak Chand : Yes. It was pointed out by some of my friends that in the case of these areas which come under water almost every year on account of the floods which carry away the boundary marks it becomes difficult to identify one field from another field. I remember to have seen some of these villages soon after the floods of an exceptionally serious character, but in most cases I found that the boundary marks between the fields were intact and the land had been cultivated as soon as the floods had subsided. They had *sarkanda* and other growth of similar character which are found growing quite abundantly on those boundary lines which prevent their being carried away by floods. As has already been pointed out in most of these villages some of the tenants have acquired rights of occupancy. If tenants can acquire rights of occupancy in spite of the land being an alluvial, then I fail to see why such a large area should be excluded and the tenants in that area deprived of the privilege that is sought to be conferred on the tenants by this Bill. As regards the points that sometimes the land is cut off or goes under water and becomes the bed of the river, then with the disappearance of land for the purposes of cultivation the rights of the tenants are extinguished *ipso facto*. As regards the river bed, that is a different matter, but so long as the land continues to be in continuous cultivation with one tenant, then I do not see any reason why it should not be the subject of statutory tenancy.

Mr. R. Burn : The honourable member for Budaun said that a certain amount of confusion appears to have arisen in the debate. I think that the reason for that was not so much confusion in the minds of the members who have spoken, but because the circumstances of the case differ so much from river to river and even along the course of a single river. We have to distinguish between two different cases. One is where the land is subject to inundation. The Revenue Secretary has explained to us how on the Jumna near Muttra land is inundated annually and still a great deal of it is cultivated with very good crops and is subject to occupancy rights. The honourable member for Ballia drawing on his experience of that district has told us that occupancy rights are freely held. There is one village I know in the east of Ballia where the river almost every year flows over a greater part of the village. It obliterates the marks. There is no *sarpat* or *sarkanda* there and disputes arose in regard to those fields to such an extent that Government laid down a series of boundary marks in small squares, and within a week after the water flows off from that village the patwari is able to lay out the old field boundaries from his map. In cases like

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that where occupancy rights have been recognized there seems to be not the slightest reason why we should not have statutory rights. The honourable member for Hardoi has said that statutory rights do not exist in those mahals in Oudh. That is perfectly true, but the history of Oudh and the history of Agra have been different, and it is unreasonable, I may say, procrustean, to make the law in both the provinces coincide. The amendment which has been moved is unsatisfactory on the ground of vagueness. It speaks of land which is subject to annual alluvion and diluvian, I am not clear.

Deputy President: The word "annual" has been omitted from the amendment.

Mr. R. Burn: I am not quite clear whether he referred merely to inundation, to the land being covered by water annually in the rains, or whether he referred to land which is liable to be cut away or to have additions made to it. But in any case I think that all members of this Council will agree that where you have merely casual cultivation in a river bed such as one sees in melon cultivation, in the big rivers, no statutory rights should be allowed in that. The land which is occupied is not always the same, but in the case of land which is merely subject to inundation or land which is sometimes cut off and sometimes re-formed, but which has been surveyed and can be identified, in land of that sort I think statutory rights certainly should be allowed to accrue.

Khan Bahadur Mr. Muhammad Aslam Saifi: I had expected that the Government would advance some very strong reasons for not accepting this amendment, having withheld the right of statutory tenancy in the Oudh province from the alluvial lands. But the only argument that my friend Mr. Burn has given is that the history of the two provinces is different. I think this legislation is not based upon the history of the two places.

Mr. R. Burn: Would the honourable member confiscate occupancy rights also in Agra?

Khan Bahadur Mr. Muhammad Aslam Saifi: I admit, I was going to say that occupancy rights have already accrued in certain parts, but as Mr. Burn had pointed out that in the course of the same river conditions differed with regard to different places. But I suppose the strongest reason that could be advanced in favour of the amendment was pointed out by my friend who sits to my right, and that is that so long as there are quinquennial settlements to be made in that part, the statutory right should not accrue. Therefore I give my support to the amendment.

Rai Bahadur Lala Mathura Prasad Mehrotra: I move for closure.

Question, "that the question be now put" put and agreed to.

Deputy President: In the course of his speech the Hon'ble the Finance Member said he had an amendment to move. It has not been formally moved yet. Will the honourable member move it now?

Pandit Brijnandan Prasad Misra: Point of order, Sir. Can an amendment to an amendment be moved after closure has been accepted?

Deputy President: It is for the House to allow the motion. The Finance Member in fact mentioned that he desired to make an amendment, and he will now move it. If the House rejects it, it cannot

be moved. Has any honourable member any objection to the amendment being moved ?

Hon'ble Sir Sam O'Donnell : I would like to modify the amendments, not in substance, but only so as to meet the points raised in the course of the debate. I move that the following clause be substituted :—"Provided that statutory rights shall not accrue in land used for casual or occasional cultivation in the bed of the river."

Khan Bahadur Mr. Masud-uz-Zaman : Is it open to members to speak on the amendment ?

Deputy President : This has been sufficiently discussed. This was mentioned in the arguments advanced by the Finance Member in his speech, and those who spoke after him considered and discussed this portion sufficiently

Rai Bahadur Thakur Hanuman Singh : May I suggest that "zaid-fasl" be substituted for "occasional cultivation" ?

Deputy President : "Casual" covers the meaning well enough.

Khan Bahadur Maulvi Muhammad Fazi-ur-Rahman Khan : The argument advanced by the Government members against my proposal does not commend itself to me. I am still unconvinced on that point. Mr. Burn observed that the history of Oudh differs from the history of this province. This argument is fallacious. It has been repeatedly alleged by Government members that this Bill has been drafted on the lines of the Oudh Rent Act. Whenever our amendments go beyond the provisions of the Oudh Rent Act we are confronted with the provisions of that Act. When an amendment is based on any section of the Oudh Act, the difference in the history of two provinces is pleaded. I do not understand this reasoning. My proposal, Sir, is good for tenants also. Because if the water does not leave that land in time, and the tenant does not get an opportunity of sowing and ploughing it, why he should be responsible for the rent for that year. If he is a statutory tenant he must pay the rent. If he is not a statutory tenant, certainly he will leave that land and not plough it in that year and will not be responsible for the rent. My learned friend from Ballia suggests that the tenant will get remission. My friend appears to be in favour of litigation. Had he been a vakil this should not have surprised me, but he is a retired deputy collector and his remark has surprised me much. The tenant will have to apply for remission. If the landlord does not happen to be a good one he will oppose that application ; witness will follow witness ; vakils will deliver lengthy arguments and much public time and money will be wasted.

Sir, there is another very strong reason why my amendment should be accepted. Statutory right is an innovation. We have no experience of statutory right as yet. We do not know whether it will prove beneficial to the tenants or not ; we do not know whether it will harm the landlords or not. It is quite an innovation ; and at this stage, Sir, I am certainly not prepared to allow the conferment of statutory rights in alluvial mahals.

Another point urged by the Hon'ble the Finance Member against my amendment was that occupancy rights have so far been allowed in alluvial mahals. There is a great difference between occupancy rights and statutory rights. When occupancy rights accrue in favour of a tenant it

[Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.]

certainly shows that the land has been stable and that it has been continuously cultivated for a period of twelve years. It is not so in the case of statutory rights. A tenant who ploughs a field once gets statutory rights. There is no guarantee for the stability of that land. My submission is that the arguments that can be advanced in favour of occupancy rights cannot be advanced in favour of statutory rights.

One word more and I have done. It has been said that my amendment is vague and is not clear. Sir, with all the respect due to those gentlemen who called my amendment vague I affirm emphatically that my amendment is as definite as an amendment can be. "Land subject to alluvion and diluvian" certainly means land that constitutes an alluvial mahal. There cannot be the least doubt about it. My meaning is as clear as anything.

For these reasons I press my amendment and I hope that the Council will accept it.

Hon'ble Sir Sam O'Donnell: The issue before the House is really this. It is admitted, I believe, on all sides, that there is a great deal of land which is included in alluvial mahals, which is continuously cultivated and which does not differ in any essential respect from land which is not included in alluvial mahals.

Rai Bahadur Thakur Mashal Singh: That is called *mustagil* mahal.

Hon'ble Sir Sam O'Donnell: Whatever it is called there is a great deal of land which would come under the definition—"Land subject to alluvion or diluvian." That means land to which an accretion may be made by the action of the river or land from which something may be taken away by the action of the river. It is quite certain that definition covers a great deal of land which is continuously cultivated, which does not differ, as I said, in any essential respect from other land.

Khan Bahadur Shaikh Masud-uz-Zaman: Why is it settled every five years?

Hon'ble Sir Sam O'Donnell: Simply because it is flooded in the rains, and the floods may sometimes leave a deposit of sand.

Rai Bahadur Thakur Mashal Singh: Is it not a fact, Sir, that there are two kinds of mahals?

Hon'ble Sir Sam O'Donnell: They are called alluvial mahals. I myself have seen the land. You can see on the opposite side of the river in the Allahabad district great stretches of land that have been cultivated for the last 30, 40 or 50 years. Why in such land should not statutory rights accrue?

It is quite certain that under this amendment statutory rights will not accrue. If any definition could have been suggested which would have distinguished casual and occasional cultivation from permanent cultivation other than the definition that I have suggested, we should have been willing to consider it. It is quite certain, however, that this definition will cover large areas of practically permanent cultivation. In the eastern districts a river may sometimes take a great bend. It may go miles inland. Under this definition, therefore, land which is miles away from the present course of the river might be held to be subject to alluvion and diluvian. I ask, Sir, on what principle is that justified. As to the Oudh Rent Act. This Bill does not in every single

respect follow the Oudh Bill. For example, there is a more liberal scale laid down for the acquisition of *sir* than there is in Oudh. Surely if a clear mistake was made in the case of Oudh that is no ground for repeating that mistake in the case of Agra? I submit, Sir, that this amendment is based on no principle. We are quite ready to meet the honourable mover to the extent to which I understood at one time he asked us to go. We are quite prepared to exclude land in the bed of a river which is only used for casual cultivation. But we are asked to agree to an amendment which will have the effect of barring the accrual of statutory rights in large areas of land which have been cultivated for years and years as Khan Bahadur Maulvi Fasih-ud-din himself admitted. If I may say so, there is really no principle in that.

Khan Bahadur Maulvi Fasih-ud-din: May I know if these stretches of land having got the same sort of permanent cultivation have been wrongly included in the alluvial mahal and wrongly brought in the list of quinquennial settlement?

Hon'ble Sir Sam O'Donnell: The lands which I am referring to very often have not *kharif* crop. But *rabi* crops are grown on them. They may be covered for a year with deposits of sand, but after that they may be continuously cultivated for long periods.

Khan Bahadur Maulvi Fasih-ud-din: So cultivation is unstable?

Hon'ble Sir Sam O'Donnell: It is not unstable. There are large areas which are continuously cultivated.

Khan Bahadur Maulvi Fasih-ud-din: Is it not possible to bring them on the regular scale?

Hon'ble Sir Sam O'Donnell: We should have in that case to revise the settlements of a great number of mahals.

Question put, that the following proviso be inserted:—

"Provided that statutory rights shall not accrue in land used for casual or occasional cultivation in the bed of the river."

The House divided: Ayes, 46; Noes, 42.

Ayes.

Hon'ble Sir Sam O'Donnell.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.

Mr. G. B. Lambert.

Mr. E. A. H. Blunt.

Kunwar Jagdish Prasad,

Sir Ivo Elliott.

Mr. P. H. Tillard.

Mr. H. A. Lane.

Mr. R. L. Yorke.

Mr. R. Burn.

Mr. A. W. Pim.

Mr. B. J. K. Hallows.

Mr. E. L. Norton.

Mr. H. G. Billson.

Mr. R. J. S. Dodd.

Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenroder.

Mr. H. David.

Babu Khem Chand.

Babu Narayan Prasad Arora.

Babu Sangam Lal.

Babu Mohan Lal Saksena.

Babu Damodar Das.

Babu Bhagwati Sahai Bedar.

Thakur Manjit Singh Rathor.

Chaudhri Jaswant Singh.

Pandit Nanak Chand.

Thakur Shiva Narayan Singh.

Babu Nemi Saran.

Chaudhri Badan Singh.

Thakur Sadho Singh.

Pandit Brijnandan Prasad Misra.

Pandit Jhanni Lal Pandey.

Pandit Sri Krishna Dutt Paliwal.

Babu Parsidi Narayan Anad.

Pandit Yajna Narayan Upadhya.

Rai Bahadur Thakur Hanuman Singh.

Pandit Govind Ballabh Pant.

Pandit Har Govind Pant.

Mr. Mukandi Lal.

Babu Ram Chandra Sinha.

Dr. Jaikaran Nath Misra.

Maulvi Zahur-ud-din.

Mr. E. M. Souter.

Mr. Tracey Gavin Jones.

Noss.

Raja Muhammad E'jaz Rasul Khan.
 Raja Bahadur Brij Narayan Rai
 Lala Kishan Lal.
 Rai Jagdish Prasad Sahib.
 Rai Sahib Chaudhri Sheoraj Singh.
 Thakur Rajkumar Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amb Prasad Sahib.
 Raja Suryapal Singh.
 Lala Dhakan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Rai Bahadur Pandit Balbhadra Prasad Tiwari.
 Raja Sri Krishna Dutt Dube.
 Rai Sahib Babu Dip Narayan Roy.
 2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
 Raja Indrajit Pratap Bahadur Sahi.
 Bhaya Hanumat Prasad Singh.
 Rai Bahadur Thakur Masihal Singh.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Itao Sahib Abdul Hameed Khan.
 Maulvi Shahab-ud-din.
 Khan Bahadur Chaudhri Amir Haun Khan.

Mr. Muhammad Ismai Ali Khan.
 Maulvi Muhammad Obaid-ur-Rahman Khan.
 Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Shaikh Masud-uz-Zaman.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq Husain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Mr. Ashiq Husain Mirza.
 Khan Bahadur Munshi Siddiq Ahmad.
 Raja Saiyid Ahmad Ali Khan Alvi.
 Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
 Shaikh Abdus Samad Ansari.
 Rai Bahadur Lala Behari Lal.
 Rai Bahadur Lala Mathura Prasad Mehrotra.
 Raja Shambhu Dayal.
 Lieut. Raja Shaikh Imtiaz Rasul Khan.
 Raja Jagannath Bekhsh Singh.

Khan Bahadur Mr. Muhammad Aslam Saifi: I beg to move that a new sub-clause as (h) to clause 19 be added as below :—

“(h) land covered with fruit-bearing trees of any kind planted by the landlord.”

Deputy President: There is one difficulty to this amendment being moved. We have finished the clauses already and it is not possible to go back.

If the honourable member is anxious to move his amendment, he can do so only as an amendment to the proviso which has just been passed by the Council.

Khan Bahadur Mr. Muhammad Aslam Saifi: I have no objection to this course. The House will remember that when they fixed upon the definition of “grove-land” they excluded from it certain fruit-bearing trees, but included certain others. I think it was to the great disappointment of my friends who represent Allahabad in this House that guava trees were excluded. A very interesting couplet was written by a famous poet of Allahabad, named Akbar, and it runs thus :—

“Kuchh nahin saman Allahabad men bahbud ke,

Kya dhara hai yan bajuz Akbar ke aur amrud ke.”

That great poet is gone, but unfortunately the guava tree is also gone from the grove-land. Those, however, who have had anything to do with the fruit-growing industry will realize that it is a very paying one. Every plot of land in a village is not suited for this purpose, but when fruit trees are planted, they do not grow up to their full growth in a couple of months. Usually the tenant is allowed to carry on cultivation in that plot, but it will be a very anomalous position for the landlord if on the one hand he gets the statutory right and on the other the fruit trees planted are able to yield him the crop. In that case the owner of the garden will be nowhere. I think the reasonableness of my amendment will be apparent to the House and so I need not waste any more time of the House.

Hon'ble Sir Sam O'Donnell: It seems to me that this amendment is unnecessary, and I hope I shall be able to satisfy my honourable friend that it is so. The proposal is to prevent the accrual of statutory rights in land planted with fruit-bearing trees. Now, we have already provided that statutory rights shall not accrue in grove-lands. Grove-land, however, does not include land planted with fruit-bearing trees such as guavas and peaches. I think what the honourable mover is afraid of is this: Suppose a landlord plants on a certain land guavas and peaches, and while they are growing he arranges with a man to look after them and at the same time allows him to cultivate the land in between the trees. Now, the honourable member fears that statutory rights might accrue in favour of the *baghban*. I assure him that they will not. The *baghban* is in the position of a servant. He is put in charge of the trees and he is also allowed to cultivate the land in between the trees and to take the produce. I am assured by Mr. Burn who has an intimate knowledge of the subject that no such person will ever be regarded as a statutory tenant. It seems to me therefore that this amendment is unnecessary.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan: (*During this speech the Hon'ble the President resumed the Chair.*) Sir, I regret that I disagree with the Hon'ble the Finance Member on this point. My impression is that the Hon'ble the Finance Member does not know the powers of the almighty patwari. Let us examine the question like practical men. Suppose I own a piece of land and I plant guava trees on it. When the trees are two years old I ask a villager to look after the trees and to cultivate the land and take the produce in lieu of his wages. The patwari, Sir, will ignore the existence of those trees and will record him as a cultivator. Under the provisions of this Bill that *baghban* will acquire statutory rights. The result will be that the poor landlord will not only lose the land but will also lose all the money which he spent over the trees.

Now, Sir, I will refer the honourable members to the definitions of "rent" and "land." "Rent" means whatever is, in cash or kind, to be paid or delivered by a tenant for land held by him. "Land" means land which is let or held for agricultural purposes, or as grove-land or for pasturage. It includes land covered by water used for the purpose of growing *singhara* or other similar produce, but does not include land for the time being occupied by dwelling-houses or manufactories, or appurtenant thereto. If the honourable members keep these definitions in view, they will agree with me that in cases like the one I have mentioned statutory rights will accrue. This was never the intention of the framers of the Bill.

The Hon'ble the Finance Member thinks that this amendment is unnecessary. I am thankful to him, because he does not think that the amendment is pernicious or harmful. My submission is that let this unnecessary amendment be passed as so many other unnecessary provisions have already been put in the Bill. It may meet an exceptional case and will not harm anybody. I hope the Hon'ble the Finance Member will reconsider his decision. For these reasons I support the amendment and I request the Hon'ble the Finance Member to agree with the honourable mover. It has become customary with Government to oppose amendments moved by non-official members. My respectful request is that this custom should be broken at least in this case.

Khan Bahadur Mr. Muhammad Aslam Saifi: Had it been the case of *baghbans* I would not have moved this amendment at all. I suppose that the case I had in mind was not known to the Hon'ble the Finance Member. I have seen *ber* trees grown on *bhur* land and the crop from *ber* trees is very much more profitable than what one gets from the cultivation of that land. Of course, it takes a number of years for the *ber* trees to be able to yield a crop. Similarly there are *kalmi am* and various other trees which are grown in this manner where formerly cultivation was carried on in the fields. Of course, I know that in certain *baghs* there are plots of land reserved for ordinary cultivation. I have no such case in my mind, but if the Government are prepared to meet my case I shall be willing to withdraw the amendment.

Hon'ble Sir Sam O'Donnell: The honourable member for Shah-jahanpur has, as I know from experience, one of those ingenious minds which can always produce hundreds of hypothetical cases. He says that I do not know the great power of the patwaris. Well, I admit that my acquaintance with the patwari is rather ancient, but I have no doubt that the patwari is a person who has considerable power. But what he omitted to notice is that if the patwari were unscrupulous he could always show in the papers no trees at all on the land. In that case the amendment would have no effect whatever. I understand that the honourable mover has in view the case in which a tenant is in occupation of land and the tenant allows the landlord to plant some *beri* trees. But it seems to me that in that case statutory rights ought to accrue, because the tenancy has not terminated. The tenant has not surrendered it to the landlord and agreed that the landlord may take it over and plant trees. There is merely a private arrangement by which the tenant has allowed him to plant trees and that being so statutory rights should accrue.

Khan Bahadur Mr. Muhammad Aslam Saifi: What happens if the trees are grown by the landlord?

Hon'ble Sir Sam O'Donnell: If the trees are grown by the landlord and if the trees are the property of the landlord, the tenant would not want to keep his statutory rights. The trees would belong to the landlord and there would be no land on which any cultivation could be carried on. In that case the question of statutory rights could hardly arise. This amendment is hardly of much importance and I am sorry that it has taken up so much time. I suggest, however, that it is unnecessary and I hope that the honourable mover will recognize that and withdraw it.

Khan Bahadur Mr. Muhammad Aslam Saifi: I beg to withdraw my amendment.

Amendment by leave withdrawn.

Khan Bahadur Maulvi Mahbub Ali Khan:

— جناب والا

میری قریم یہ ہے:—

اس دفعہ میں شرط چارم یہ ہے ہوا دی جاے کہ حق قانونی اس
دفعہ میں نہ پیدا ہوگا جو کہ ملکیت ایسے زمیندار کی ہو جس کے پاس اس
موقع میں صرف 10 ایکڑ یا اس سے کم مزدورہ دفعہ ہو *

Hon'ble the President: Khan Bahadur Maulvi Mahbub Ali Khan has proposed that a new proviso be added:—

"Provided, fourthly, that no statutory rights can accrue in the land of a landlord holding in a village cultivated area of 15 acres or less."

Notice of this was handed in at 11 o'clock today. Is there any objection to the moving of this amendment?

Hon'ble Sir Sam O'Donnell: I object to this. It is a very radical amendment, and I think we are entitled to have longer notice for an amendment of this nature.

Question, that clause 19, as amended, stand part of the Bill, put and agreed to.

CLAUSE 18.

Hon'ble the President: Honourable members will remember that the Hon'ble the Finance Member wanted time to draw up amendments to clause 18. I understand that they have been drawn up and that they meet with the general wish of the House. It is for this reason only and as a special case that I call upon him to move them, as an amendment to *Hatiz Hidayat Husain's*.

Hon'ble Sir Sam O'Donnell: I beg to move an amendment which, I believe, will meet all parties and put an end to a lot of discussion. The amendment which I propose is as follows:—

Substitute for sub-clause (2) as follows:—" (2) Subject to the provisions of sub-sections (3) and (4), the court, after giving notice to the person who is alleged to have conferred the right of occupancy and satisfying itself that such a right has been conferred in accordance with the provisions of section 17, shall cause the applicant to be recorded as an occupancy tenant in the annual registers maintained under section 33 of the United Provinces Land Revenue Act, 1901. If the court is not satisfied as aforesaid, it shall, subject to the provisions of sub-sections (3) and (4), reject the application."

Substitute for sub-clause (3) as follows:—" (3) When in proceedings under this section a question arises whether the person purporting to have conferred the right of occupancy was competent to do so, the court shall, if a question of proprietary right is in dispute and has not already been determined by a court of competent jurisdiction, require by an order in writing the party whose name is not recorded as proprietor of the land in the annual registers maintained under section 33 of the United Provinces Land Revenue Act, 1901, to institute within two months a suit in the civil court for the determination of such question of proprietary right. Where the names of all parties to the dispute about the question of proprietary right are recorded in the aforesaid registers, the court shall frame an issue on the question of proprietary right and submit the record to the competent civil court for the decision of that issue only. The civil court after re-framing the issue, if necessary, shall decide that issue only and return the record together with its finding on that issue to the court of the assistant collector in charge of the sub-division, who shall accept the finding of the civil court on the issue referred to it."

Substitute for sub-clause (4) as follows:—" (4) Where an order has been passed under sub-section (3), if the party whose name is not recorded

[Hon'ble Sir Sam O'Donnell.]

in the aforesaid annual registers fails to comply with it, the court of the assistant collector in charge of the sub-division shall decide such question of proprietary right against him. If such party institutes a suit in compliance with the order, the court of the assistant collector in charge of the sub-division shall dispose of the application pending before it under sub-section (2) in accordance with the final decision of the civil court of first instance on appeal, as the case may be, upon such question of proprietary right."

Substitute for sub-clause (5) as follows:—" (5) Where the court of the assistant collector in charge of the sub-division rejects an application under this section, it may (after taking into consideration the decision of the civil court, if any) award to the applicant such damages (including the return of the consideration, if any, paid by the applicant to the person purporting to have conferred the right of occupancy) as it may deem just."

Substitute for sub-clause (6) as follows:—" (6) The court of the assistant collector in charge of the sub-division or the civil court may, either of its own motion or on the application of any person, direct that any person be made a party to the proceedings but nothing in this section shall debar a person who has not been a party to such proceedings from establishing any right in any civil or revenue court."

Substitute for sub-clause (7) as follows:—" (7) An appeal against an order of the court of the assistant collector in charge of the sub-division under this section shall lie to the commissioner, provided that if a question of proprietary right has been in issue between parties claiming such right in the court of the first instance as is in issue in the appeal, the appeal shall lie to the competent civil court "

I understand this meets the points of Khan Bahadur Hafiz Hidayat Husain.

Khan Bahadur Hafiz Hidayat Husain : I am prepared to accept the amendment. I only wish to make it clear that the onus would always lie on a party going to court under clause (2).

Question, that sub-clauses (2), (3), (4), (5), (6) and (7), as in the Bill, as reported by the select committee, stand part of the Bill, put and negatived.

Question, that the sub-clauses, as amended by the Hon'ble the Finance Member, be inserted, put and agreed to.

Question, that clause 18, as amended, stand part of the Bill, put and agreed to.

CLAUSE 8.

Hon'ble the President : Is there any amendment to clause 8? There was one which we were discussing the other day.

Khan Bahadur Maulvi Fasih-ud-din : I withdraw it, Sir.

The amendment of Khan Bahadur Maulvi Fasih-ud-din by leave withdrawn.

Hon'ble Sir Sam O'Donnell : I beg to move an addition of sub-clause (3) to clause 8 which would run as follows:—

Hon'ble the President : New clause ?

Hon'ble Sir Sam O'Donnell : Yes, Sir. "Where land not previously cultivated has been or is hereafter let by a landholder to a tenant either after being reclaimed by or at the expense of the landholder or for the purpose of being reclaimed by the tenant, nothing in this section shall be construed to effect the conditions of any contract relating to that land until 14 years have elapsed from the date on which the land was first brought under cultivation; provided that where land has remained uncultivated during a period of seven years, it shall for the purposes of this section be deemed to have not been previously cultivated."

This has been taken directly out of the Oudh Rent Act.

Khan Bahadur Shaikh Masud-uz-Zaman : I want to know whether the contract under this amendment will be any particular kind of contract or will it do for the tenant to agree on a mere ordinary *patta*. Is it to be registered? That is what I want to know.

Hon'ble Sir Sam O'Donnell : It is not possible for me to speak with any authority on this point. It would depend, I take it, however, on the terms of the contract. It is really quite impossible to say offhand whether the contract must be made by a registered or can be made by an unregistered instrument. It would depend on the terms of the contract. I imagine that none even of my lawyer friends would like to give an opinion offhand.

Dr. Shafa'at Ahmad Khan : Not without considering it.

Question, that a new sub-clause (3) as above be inserted in clause 8, put and agreed to.

Question, that clause 8, as amended, stand part of the Bill, put and agreed to.

CLAUSE 3.

Question, that clause 3, as amended, stand part of the Bill. put and agreed to.

CLAUSE 20.

20. (1) The heir of a statutory tenant is the person entitled to Heirs of statutory succeed to the tenancy under the provisions of tenants. section 24 or 25.

(2) Such heir or in the event of his death successive heirs under section 24 or section 25 shall be entitled to retain possession of the holding of the deceased statutory tenant for a period of *three* years from the latter's death or if the deceased tenant held a lease at the time of his death of which the unexpired portion is longer than *three* years, until expiry of the period of the lease :

Provided that (1) if (a) he has been admitted in writing by his landholder as a statutory tenant,

or (b) *no proceedings have been taken by his landholder to eject him within three years after the expiry of the period specified in sub-section (2)*, he shall be considered to have been admitted to the holding within the meaning of section 19(b) and shall be deemed to be a statutory tenant ;

(2) when there are *two or more* co-tenants of a statutory tenancy the period of three years specified in proviso (1) (b) shall not be deemed to have expired for the heir of any co-tenant till it has expired for the heir of the last surviving co-tenant.

Pandit Govind Ballabh Pant : I move that the following words be added after sub-clause (1) :—

"If such heir of the statutory tenant is his son or grandson or widow, then such heir shall be entitled, to retain possession of the holding of the deceased statutory tenant for his or her lifetime, subject to the condition that, in case the rent is inadequate, the landlord will be entitled to claim enhancement forthwith irrespective of other provisions of this Act, and also, to one year's rent as premium."

I will not take much time of the Council over this amendment. I covered most of the ground which would be relevant in connexion with this amendment when I referred to another amendment about the preservation of the principle of occupancy in this Bill. This amendment is narrower in scope than the one that I proposed then. It aims at continuing the holding after the lifetime of the tenant if he has a son or in case the son is dead, he has a grandson or a widow, only for his or her lifetime. It seems to me that so far as the reasons for this amendment are concerned, they can be very well imagined by the members of this House. It is unnecessary for me to dwell on them over again. It is practically a quarter of a way house, if I may be allowed to say so between the present provision of the Bill and the complete acceptance of the principal of inheritance. As honourable members may have noticed, the provision is very fair and equitable. I think honourable members will agree with me in thinking that a male lineal descendant of the tenant should be allowed to cultivate the land after the death of a statutory tenant; otherwise it will seriously affect the development of agriculture and the tenants will not be able to put their heart in their holdings, and I also feel that when a man dies leaving a son or a grandson or a widow, the sources of his livelihood should be kept intact for his heirs. These are the reasons for the first clause of this amendment. Then, in order that the zamindar or the landlord may not suffer because of the introduction of such a clause, I provide that in case the rent is inadequate it must be enhanced forthwith. I assume that the landlord is interested in land in two ways; either he wants it for his own cultivation or he wants to let it out to another tenant and to secure rent for it. So far as acquisition is concerned, the Bill provides for that and I hope there will be no difficulty in the case of landlords who really want land for extension of their cultivation. The other use that they can make of their land is simply by letting it out to tenants. Now when land is let out to tenants a zamindar can only get rent. He can suffer if the rent is inadequate, but if the rent is raised forthwith, I do not see how his interests suffer in the least. So I provide that in case the rent that is being paid for the holding or that was paid by the deceased tenant was not adequate, then the landlord will have the right, irrespective of the term prescribed in the Act for enhancement of rents, to seek immediate enhancement so that he may have the full benefit of the death of the statutory tenant. It is some advantage which will accrue to him as soon as the tenant dies. I am sure this will not in any way induce them to invoke the death of the man, but all the same I trust that such a provision will work to their advantage. It only then means this that, instead of putting another man in charge of the holding, they will be tied down by this Act to the son or the grandson or in case there is no son or grandson, then to the widow, and it is only,

I may make it clear, for the lifetime of such descendant or widow that the holding is to remain in his or her possession. As soon as such a son or grandson or widow dies, the holding reverts to the zamindar immediately and forthwith. And then I make a further provision and say that the son or the grandson or the widow will also be liable to pay *nasrana* which will be equal to one year's rent. I hope I have tried to take away all the acerbity from it and have tried to be fair to both parties and as such I appeal to the honourable members of the House to accept my amendment.

Pandit Nanak Chand : In the light of an amendment which stands in my name I would propose an amendment to the amendment which is before the House. My amendment to the amendment of my friend, Mr. Pant, will be that to the effect for the words "son or grandson or widow" substitute the following :—"Widow, male lineal descendant in the male line or the widow of such male lineal descendant".

Hon'ble the President : For the words "his son or grandson or widow" the honourable member wishes to substitute—"his widow, male lineal descendant in the male line of descent or the widow of such male lineal descendant."

This is practically a paraphrase of what appears in the name of Pandit Nauak Chand under 382A.

Pandit Nanak Chand : The only difference between my amendment and the amendment of Pandit Govind Ballabh Pant is that I propose to add under this list "the widows of the male lineal descendants in the male line."

Hon'ble the President : Not only that. Instead of son and grandson you wish to make it descendants in the male line of descent.

Pandit Nanak Chand : Of course, if there is a great grandson I include him also among the heirs of a tenant. When the Oudh Rent. . . .

Hon'ble the President : The honourable member need not allude to the Oudh Rent Act. We know what the honourable member means. He wants to widen the succession. It is no use elaborating an argument over it.

Pandit Nanak Chand : I want to refer to certain arguments then used by you, Sir, as a member of the zamindar party on the floor of the House.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : He was never a member of the zamindar party.

Pandit Nanak Chand : I accept the correction, I ought to have said member of zamindar class.

Hon'ble the President : I hope the honourable member will withdraw so far as that goes because I cannot reply to that.

Pandit Nanak Chand : I withdraw, but I wanted to allude to that Bill simply because at that time a note was prepared by Mr. Hopkins the then Senior Member of the Board of Revenue in which he pointed out that in the interest of peace and order and contentment it was necessary that hereditary rights be conceded to the statutory tenant. At that time

[Pandit Nanak Chand.]

when this amendment of Pandit Gokaran Nath Misra was being discussed, you, Sir, in your capacity of a member on the floor of the House while supporting the principle of acceding the right of inheritance to a limited extent were pleased to remark and I would with your permission make only two or three small quotations from that small but pertinent speech.

Hon'ble the President: Will the honourable member quote the amendment also that was moved then and not use only the arguments.

Pandit Nanak Chand: Yes, Sir. The amendment that was moved by my friend honourable Justice then (Pandit) Gokaran Nath Misra, was as follows:—

"Statutory tenant means a tenant to whom sections 36 and 37 apply and includes in the event of his death the following heirs only on whom his interest in the holding shall devolve in the order described below:—

- (a) Male lineal descendants in the male line.
- (b) Widow till her death or remarriage.
- (c) Father.
- (d) Mother till her death or remarriage.
- (e) Daughter-in-law being a widow or dependant on the deceased statutory tenant at the time of his death.
- (f) Daughter's son, (g) brother, (h) brother's son and (i) brother's son's son.

I may here point out that you, Sir, were pleased to support the case of the first two classes only that is (1) the male lineal descendants in the male line, and (2) widow till her death or remarriage. What I am interested in at present, is to point out that you, Sir, were pleased at that moment to support the principle of hereditary rights at least for these two classes.

Hon'ble the President: I must say that it is rather unfair to the occupant of the Chair, especially because the occupant of the Chair is not in a position to reply or to say anything on the point. It is much better that the amendment be spoken to on its merits irrespective of what the occupant of the Chair may have said when he was in a different capacity. It is hardly fair to him, for he cannot say anything as regards the arguments used, or to refer in any way to what the honourable member might say in regard to the occupant of the Chair.

Pandit Nanak Chand: Sir—If I have your permission.

Hon'ble the President: The honourable member has not my permission to quote me, though he may use my arguments. I have already said it is not fair. I do not now know what the facts were then, but as far as I remember I wanted a son and a widow to succeed to a statutory tenant. In any case it is not fair to the occupant of the Chair to refer to his arguments advanced in another capacity, for he cannot now refute anything that might be said on the floor of the House.

Mr. Mukandi Lal: Sir—If you give such a ruling it may debar us from referring in future to arguments used by different persons. It would be better if you simply expressed a wish and did not give a ruling.

Hon'ble the President: That is exactly what I have said. The amendment had better be spoken to on its merits.

Pandit Nanak Chand: My only object in wishing to quote your speech on that occasion.

Hon'ble the President: Order, order. You are not allowed to refer to that. I have already made a request and you should accede to that request.

Pandit Nanak Chand: I find myself in an awkward position. If I am allowed to proceed, then I assure you that I will not refer to that speech. On this occasion I find that among the ranks of my friends of the zamindar party there is none who would stand for extending the right of inheritance to the statutory tenant. If I wanted to allude to the old debate it was only to point out that in that Council there was at least one member of that Council who while belonging to the class of zamindars upheld the view that was in favour of or granting hereditary rights though to a limited extent. Now, Sir, I do not intend to take the time of the Council. The arguments have already been submitted by Mr. Pant, but I want to reiterate that if the zamindars are as anxious for the welfare of their tenants, as they very often profess to be, they should show this by their deeds. It is often reiterated by my zamindar friends that the relations between zamindars and tenants are those of father and son. I just want to appeal to them that if they have the same regard for the tenants and the feelings of their tenants who have as much of the natural anxiety to provide for their children, as the zamindars have for their own children to seriously consider this amendment. If the zamindars are in the position of parents to tenants I appeal to their sense of parental affection towards their tenants and I request them to agree to the conferment of the rights of inheritance to a limited extent as is proposed in the amendment.

Khan Bahadur Hafiz Hidayat Hussain: I regret that I must oppose the motion of my friends Pandit Govind Ballabh Pant and Pandit Nanak Chand. No valid arguments have been advanced to introduce the grant of this hereditary right. The zamindars as a class have accepted statutory tenancy and this is only an attempt to get the right further extended. The arguments advanced by the mover and Pandit Nanak Chand will be valid for any length of the order of succession, why confine it to the limit contained in the amendment. I do not think that we can accept this, and therefore I oppose the motion.

Hon'ble Sir Sam O'Donnell: This amendment is, as the honourable mover himself said, a half-way house, or a quarter-way house towards the conferment of occupancy rights. That being so, it stands on much the same footing as the amendment we discussed last week, and, therefore, like the honourable member himself I need not traverse the ground I covered on an earlier occasion. My own belief, for what it may be worth, is that eventually even more extensive rights than are proposed by the mover will be conferred upon statutory tenants. And so I sympathize with the object of his proposal. But at the same time, as I said before, we have aimed in this Bill at going as far as is practicable in the present state of public opinion. It is impracticable and undesirable to legislate in advance of opinion. This amendment goes much further than our proposals, and, therefore, Sir, I cannot support it.

Khan Bahadur Maulvi Fasih-ud-din : Sir—I realise that the plain meaning of this amendment is this, that the statutory right should continue for two generations instead of one generation, and the honourable mover of this amendment also throws out some temptations to the zamindars in the matter of the enhancement of rents and the levying of a premium. I have given my best thought to this amendment and I must confess that it is as it were on the fence between the views of the zamindar party and the views of the swaraj party, but my difficulty is this that we have already passed the definition of a statutory tenant and the definition is to the effect that the statutory tenant means a tenant who is entitled to hold the land for his life. I am, therefore, unable to understand how can a statutory tenant be allowed to hold the land for two lives after we have passed this definition and after the definition is unchangeable and immutable.—Unless we suppose that the soul of the statutory tenant passes into his son or into his widow, which is a contingency beyond my understanding. For this reason I think now that we have done the thing and have agreed to the definition of the statutory tenant with open eyes we cannot go back upon that definition and invent some other section in order to enable the statutory tenant not only to hold the land for his life, but for the life of his son or widow or grandson. For that reason I think that this amendment is impracticable and is rather late in the day.

Pandit Govind Ballabh Pant : Sir, as we are hard pressed for time I do not think that it would be proper or it would serve any useful purpose to make any effort to answer the arguments that have been advanced against the amendment proposed by me. As to the father surviving the son, I think that that is an accepted principle all over, and we in our Shahstras have got a fine couplet in Sanskrit which exactly means what the equivalent in English means. So, if Khan Bahadur Maulvi Fasih-ud-din Shaheb's trouble is only this, whether the son's soul is any part of the father, I can assure him that we are assured that it is so. I will leave it at that.

The merits or demerits of my amendment are plain and obvious enough. If honourable members are satisfied that the present scheme will be the best one I have no quarrel with them. If they feel that without in any way encroaching on anybody's rights the amendment will improve the situation, then it is due to me that they should accept my amendment. I believe that it is of a wholesome character. It will be to the benefit of all parties interested in land, in the interests of the zamindars as well as the tenants. I am sorry I am unable to agree with the views of those who do not see eye to eye with me in this matter. But as I still believe that many of those who have not spoken agree with me I have to press my amendment.

Question, that the amendment move by Pandit Nanak Chand be inserted, put and negatived.

Question, that the amendment moved by Pandit Govind Ballabh Pant be inserted, put and negatived.

Hon'ble Sir Sam O'Donnell : I beg to propose that in lines 4 and 6 of clause 20(2) the word "five" be substituted for the word "three."

This amendment merely restores the period in the original Bill. The object is to enable the heir to keep the holding for a certain period so that he may be able, if necessary, to make other arrangements before he

vacates the holding, if the landlord decides to eject him. The period of five years, as I have said, was in the original Bill; it is also in the Oudh Rent Act. It seems to me to be a more reasonable period to allow a heir than the period of three years.

Mr. Mukandi Lal: I move that the word "five" be substituted by the word "eleven."

The reason why I have selected this mystic figure eleven is this. I am following the law of limitation, and I thought that the real idea of the landlord members was that when a life tenant dies his holding should not pass on to the heirs. Therefore there should be a limitation with a view to safeguard their interests, and I agree and sympathize with them. If they do not desire that the son should not be in the same position as the father—I say, let us have eleven years, so that when he passes into the eleventh year and comes into the twelfth year he can be ejected by the landlord. During this period the sons of the deceased father will have time to come to some understanding, some compromise, with the landlord. They may be able to offer him better terms than those offered by any other tenant. Why I suggest eleven years instead of three is because the son will have a sense of security that he will be on that holding for eleven years, and during those eleven years he will continue to effect improvements done by his father. It has been urged over and over again by various speakers that one of the primary aims of the zamindars as well as their allies is the improvement of agricultural conditions of the country. Particularly there are certain members who are not identified with agricultural interests, but they are very enthusiastic about this. The sole aim of the various sections of this Bill was to give security to the tenant so that he may improve the land and at the same time hand over part of the land to the zamindar so that he can also improve the land. If you give a sense of security to the sons of the tenant, then he will continue the improvements effected by his father. Now think for a moment the case of a tenant who in his fiftieth or sixtieth year finds that his son will not be benefited by his labours even for a small period of his life. What will he do? He will have no interest whatever in the land and he will not effect any improvements in the land that he has been cultivating all those years. That is one reason why I propose eleven years.

Secondly, I also appeal to the zamindar members of this House. They know that as a result of the various amendments that have been carried out and as the effect of this Bill 5,850,462 acres of land will be in their hands for their *sir* land. Now if this amendment is carried the statutory tenants and their sons will have for only eleven years 6,662,856 acres of land. We were reminded only the other day that the proportion of the landlords to the tenants in these provinces was that for every landlord there were five tenants. Now, if we are proceeding on the ground of justice, if we intend to safeguard the interests of the tenants, what we should do is that for every one acre of land given to the landlord as the result of this Bill we should give five acres to the tenants for their cultivation. But we are only giving them half and half. Therefore it is apparent that my amendment does not make a very great demand. I appeal to the zamindar members to accept this amendment which does not give statutory rights to the sons, but only keeps the land in their possession for a period of eleven years. It

[Mr. Mukandi Lal.]

has been urged by our friends the zamindar members that we are looking to the interests of the tenants. Here we want greater indulgence from them. We want that three years should be substituted by eleven years, i.e., to extend the period by another eight years to the unfortunate sons whose father is dead. You belong to a noble order. You are the pillars of society. You are the pillars of British *raj*, and we hope that you will be the pillars of *swaraj* one day. It is in that sense we are appealing to you to look to the tenants whom you say you are representing and whose protectors you say you are.

Hon'ble the President: The honourable member should address the Chair.

Mr. Mukandi Lal: Yes, Sir. You also belong to that noble order. Therefore I appeal to you and, through you, to your fellow zamindars that they may be magnanimous enough to substitute eleven instead of three and accept my amendment.

Pandit Yajna Narayan Upadhyaya: There is a similar amendment tabled in my name, but instead of moving that, I rise to support the amendment moved by Mr. Mukandi Lal. Sir, there is a Sanskrit proverb, *विक्रोते करणि किमङ्कुशे विवादा* | which says that when we have sold away the elephant, what is the use of quarrelling over the hook. Similarly, the House has given the right of life-tenancy to the tenants and there is no use to quarrel for the rights of the heirs of the tenants. The period of three years as proposed by the select committee as well as the period of five years as proposed by the Hon'ble the Finance Member is very short. So I submit that at least a period of eleven years may be allowed to the heirs of the deceased tenant, and within that period they will be able to settle their affairs with the zamindars concerned and make some suitable arrangements for themselves. If the heirs of the deceased are minors the difficulty would be immense, and therefore I support the amendment of my friend Mr. Mukandi Lal.

Hon'ble Sir Sam O'Donnell: I have practically nothing to add to what I have said. I think personally that the period of three years is inadequate, but the period of five years is, to my mind, sufficient for the purpose for which it is intended, namely, to enable the tenant, if necessary, to make other arrangements. Therefore I adhere to my proposal that five years be substituted for three years.

Question put that the words "three years" stand part of the Bill.

The House divided. Ayes, 39; Noes, 44.

Ayes

Raja Muhammad E'jaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Lala Kishan Lal.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheeraj Singh.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Saraypal Singh.
Rai Bahadur Lal.
Rai Sahib Kunwar Sarda Singh.

Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Raja Shri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.

Ayes.

Mr. Muhammad Ismail Ali Khan.	Khan Bahadur Hakim Mabbub Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.	Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Hafiz Hidayat Hu ain.	Khan Bahadur Chaudhri Muhammad
Khan Bahadur Shaikh Masud-uz-Zaman.	Rashid-ud-din Ashraf.
Khan Bahadur Mr. Muhammad Ismail.	Rai Bahadur Lala Behari Lal.
Dr. Shafa'at Ahmad Khan.	Raj Bahadur Lala Mathura Prasad Meh-
Khan Bahadur Saiyid Muhammad Ashiq	rotra.
Husain.	Raja Shambhu Dayal.
Khan Bahadur Maulvi Fasih-ud-din.	Lieut. Raja Shaikh Intiaz Rasul Khan.
Khan Bahadur Maulvi Muhammad Fazl-ur-	Raja Jagannath Bakhsh Singh.
Rahman Khan.	

Noes.

Hon'ble Sir Sam O'Donnell.	Dabu Mohan Lal Saksena.
Hon'ble Lieut Nawab Muhammad Ahmad	Babu Damodar Das.
Sa'id Khan.	Babu Bhagwati Sahai Bedar.
Mr. G. B. Lambert.	Thakur Manjit Singh Radhor.
Mr. E. A. H. Blunt.	Pandit Nanak Chand.
Kunwar Jagdish Prasad.	Thakur Shiva Narayan Singh.
Sir Ivo Elliott.	Babu Nemi Suran.
Mr. P. H. Tillard.	Chaudhri Badan Singh.
Mr. H. A. Lane.	Thakur Sadho Singh.
Mr. R. L. Yorko.	Pandit Brijnandan Prasad Misra.
Mr. R. Burn.	Pandit Jhanni Lal Pande.
Mr. A. W. Pim.	Lieut. Raja Durga Narayan Singh.
Mr. B. J. K. Hollowes.	Pandit Sri Krishna Dutt Faliwal.
Mr. E. L. Norton.	Babu Pars dh Narayan Anad.
Mr. H. G. Billson.	Pandit Yajna Narayan Upadhye.
Mr. R. J. S. Dodd.	Rai Bahadur Thakur Hanuman Singh.
Colonel A. W. R. Cochrane.	Pandit Govind Ballabh Pant.
Mr. A. H. Mackenzie.	Pandit Har Govind Pant.
Mr. M. F. P. Herchenroder.	Mr. Mukand Lal.
Mr. H. David.	Babu Ram Chandra Sinha.
Babu Khem Chand.	Dr Jaikaran Nath Misra.
Babu Narayan Prasad Arora.	Maulvi Zahur-ud-din.
Babu Sangam Lal.	

Question that "eleven years" be inserted put and negatived.

Question that the words "five years" be inserted put and agreed to.

Babu Sangam Lal: I beg to move that the following proviso (d) be added to clause 20(2):—

"Provided that if such heir is a minor, he shall be allowed to hold the land during his minority."

A period of five years has just been allowed by the Council to such heirs as are capable of making arrangements with the zamindar or are fit to take up cultivation elsewhere. But a minor cannot enter into an agreement with the zamindar, nor can he take up land for cultivation elsewhere. So it is necessary that a minor should be allowed to hold the land during his minority. With these few words I support the amendment.

Hon'ble Sir Sam O'Donnell: I do not think this amendment is necessary. It might mean that the minor would hold for sixteen or seventeen years. I doubt whether that would be good for the land itself. After all, the minor has presumably a guardian and the latter has the interval of five years in which to make other arrangements.

Question put that the above proviso be inserted.

The House divided. Ayes, 20; Noes, 59.

Ayes.

Babu Naryan Prasad Arora.
 Babu Sangram Lal.
 Babu Mohan Lal Sakseena.
 Babu Damodar Das.
 Thakur Manjit Singh Rathor.
 Pandit Nanak Ohand.
 Thakur Rajkumar Singh.
 Thakur Shiva Narayan Singh.
 Babu Nemi Saran.
 Chaudhri Badan Singh.

Thakur Sadho Singh.
 Pandit Brijnandan Prasad Misra.
 Pandit Jhanni Lal Pande.
 Pandit Sri Krishna Dutt Paliwal.
 Pandit Yajna Narayan Upadhyaya.
 Pandit Govind Ballabh Pant.
 Pandit Har Govind Pant.
 Mr. Mukandi Lal.
 Dr. Jaikaran Nath Misra.
 Maulvi Zahur-ud-din.

Noes.

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
 Hon'ble Rai Rameshwar Bali.
 Hon'ble Thakur Rajendra Singh.
 Hon'ble Nawab Muhammad Yusuf.
 Mr. G. B. Lambert.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Elliot.
 Mr. P. H. Tillard.
 Mr. H. A. Lane.
 Mr. R. L. Yorke.
 Mr. R. Burn.
 Mr. A. W. Pim.
 Mr. B. J. K. Hallows.
 Mr. E. L. Norton.
 Mr. H. G. Billson.
 Mr. R. J. S. Doid.
 Colonel A. W. R. Cochrane.
 Mr. A. H. MacKenzie.
 Mr. M. P. P. Herchenroder.
 Raja Bahadur Brij Narayan Rai.
 Babu Khem Chand.
 Lala Kishan Lal.
 Rai Jagdish Prasad Sahib.
 Chaudhri Jaswant Singh.
 Rai Sahib Chaudhri Sheoraj Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Raja Suryopal Singh.
 Lala Dhakan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Lieut. Raja Durga Narayan Singh.

Rai Bahadur Pandit Balbhadra Prasad Tiwari.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
 Raja Indrajit Pratap Bahadur Sahi.
 Raja Shankar Sahai.
 Rai Bahadur Thakur Mahal Singh.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Rao Sahib Abdul Hameed Khan.
 Maulvi Shabab-ud-din.
 Khan Bahadur Chauhvi Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid-ur-Rahman Khan.
 Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Sheikh Masud-uz-Zaman.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Safa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq Husain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Maulvi Muhammad Fasil-ur-Rahman Khan.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Munshi Siddiq Ahmad.
 Rai Bahadur Lala Behari Lal.
 Rai Bahadur Lala Mathura Prasad Mehrotra.
 Raja Shambhu Dayal.
 Raja Jagannath Bakhsh Singh.

Pandit Nanak Ohand: I move that the words "or (b) no proceedings..... specified in sub-clause (2)" of clause 20 be deleted. The object of this deletion is that the zamindar may not be compelled to eject the heir of a tenant if the zamindar does not want it. If this clause is retained in the form in which it is in the draft Bill, the result will be that the zamindar will have to eject him within five years, as otherwise the tenant would acquire the right of a statutory tenant. It is a provision which bears a very strong family resemblance to the twelve-year rule when the zamindars had to eject the tenants in order to prevent the accrual of the right of occupancy. If the zamindar wants to retain the heir of a statutory tenant for a longer term than five years, he should be entitled to retain him without such heir acquiring the right of a statutory tenant.

Hon'ble Sir Sam O'Donnell: I have two objections to this amendment. The first is that it makes the clause in the Bill nonsense. If the honourable members will look at the clause they will see that if these words are omitted, the rest of the clause becomes meaningless. Moreover, if there were no such provision as we have here in the Bill, the tenant would be in a perpetual state of uncertainty. He would never know what his position was.

Pandit Govind Ballabh Pant: I regret that I am unable to support the amendment of my friend from Bulandshahr.

Pandit Nanak Chand: In view of the remarks of my friend, Mr. Pant, I beg leave to withdraw the amendment.

Amendment by leave withdrawn.

Rai Jagdish Prasad Sahib: I beg to move that proviso (2) be omitted entirely. The interpretation of this proviso appears to me that in case there are more than one co-tenants of a statutory holding, the entire holding will, even after the death of the first co-tenant and after his heir has held it for five years, continue in the possession of statutory tenants till the heir of the last surviving co-tenant has held it for five years. This means that statutory holdings will take a very, very long time to evacuate, longer than was perhaps contemplated even by the framers of the Bill. The existence of co-tenants is not an uncommon feature, at least in the western districts, and if this clause is allowed to stand the zamindars in whose holdings there are more than one co-tenant will be very harshly treated. My idea is that when one co-tenant of a statutory holding dies and his heir has held it for five years, that portion of the holding should go back to the zamindar to be dealt with by him as he likes. Now, the question is, what will the zamindar do with that portion? To that I may say that clause 37 of the Bill provides that one or more co-tenants can sue the others for a division of the holding; that clause can be amended in such a way that the zamindar also can sue the remaining co-tenants for a division of the holding, and in that case the divided holding can go back to the zamindar. I think after the concession of life-tenancy, it would be very hard if this clause is allowed to stand. I, therefore, move for the deletion of this clause and hope that the Council will accept my amendment.

Hon'ble Sir Sam O'Donnell: The acceptance of this amendment would, so far as I can see, be of no benefit whatever to the landlord. If it were not there, the surviving co-tenant would take over the rights of those whom he survived and his heir would hold after the death of the last survivor for five years. There would be no difference except in the number of the tenants.

The honourable mover went on to say that we might amend subsequent clauses in the Bill in such a manner as to enable the landlords to sue for a division of the holding on the death of a co-tenant. That seems to me an entirely unreasonable proposal. If the tenants are co-tenants the last survivor must continue to hold the whole of the land. That is the ordinary law in cases of this kind.

Pandit Govind Ballabh Pant: The amendment that I want to propose to the present sub-clause is as follows:—

“Where there are two or more co-tenants of a statutory tenancy, the heir of a deceased co-tenant shall be entitled to continue in possession

[Pandit Goivnd Ballabh Pant.]

of the land or interest of the deceased co-tenant till five years have expired from the death of the last surviving co-tenant."

As the honourable members will be pleased to notice, my amendment does not make any difference in the substance of the present clause. But I find that the present clause is only of a negative character. It says "when there are two or more co-tenants of a statutory tenancy the period of three years specified in proviso (1) (b) shall not be deemed to have expired for the heir of any co-tenant till it has expired for the heir of the last surviving co-tenant." By implication it does mean that during the interval the heir of the deceased co-tenant will enjoy the interest of the deceased co-tenant. But I submit that there is a gap in the Bill as it is and we must fill it up and make a positive provision to the effect that the son of a deceased co-tenant or whoever he may be, will enjoy his interest till five years have passed after the death of the last surviving co-tenant. I have nothing more to say as to my amendment.

As regards what has fallen from the honourable member for Muzaffarnagar, I regret that I am unable to follow the force of his argument. As we all know, holdings are held under an inseparable engagement. It is no concern of the landlord whether the person who is in charge of the holding is one individual or whether there are a number of individuals who go to make up the tenancy of that holding. He can realize the whole of his rent from any one of the co-tenants and if any one of them makes any breach in respect of any part of the holding, he is entitled to seek ejectment of all from the entire holding. That being the case, I see absolutely no justification that in case one of them dies before the other, as is but natural, then the landlord should say that all of them should die at one and the same time. It is not possible for him to order a thing like that. So I submit that there is no force and the argument is in fact absolutely unreasonable. If it were a case of joint tenancy, it might have been a different thing. But it must be borne in mind that it is a case of co-tenants.

Khan Bahadur Maulvi Fasih-ud-din : I am sorry to say that our friend the honourable member for Muzaffarnagar has not been rightly understood. We know that there is no succession in the case of statutory tenants, and the heir of a statutory tenant is only allowed to hold the land for five years. What he means is that there is no rule for succession in the same way as it is in the case of co-tenants. As soon as a statutory tenant, who is a co-tenant along with other tenants in any holding, dies, and his heir has also completed the statutory period of five years, the other co-tenants' co-sharers have no right to succeed to the estate of the out-going statutory tenant. In that case the landlord should be allowed to have the holding divided up under a certain clause to which we will come later on, and get hold of that portion of the holding which fell to the share of the deceased statutory tenant. I think, in principle, the suggestion is perfectly right. If the statutory tenancy had been hereditary, and if it stood on the same footing as the occupancy holding, then of course his amendment would have been unreasonable. But in this particular case the holding of a statutory tenant who dies and whose heir has completed his term, is escheated to the landlord naturally, and the landlord is entitled to

have that share parcelled up and to take possession of that share. That is exactly the position which is created by this amendment, and I think there should be no mistake about it. And if I have understood the position aright, then I think no reasonable man can oppose it.

Mr. H. David : I think there is a confusion in making out the signification of the two expressions "co-tenant" and "joint tenant." When we use the word "co-tenant" it means that every tenant is a tenant of the entire holding, and it is *not* that a co-tenant is the holder of any one portion of it or any fraction of it. Therefore, when one tenant dies, the surviving co-tenant continues to be the tenant of the entire holding, including the son of the person who dies as he simply steps into his father's place. I have not been able to understand the speaker who just preceded me. When we use the word "heir" that really means successor, so we cannot possibly avoid talking of succession. In my opinion when a tenant dies his co-tenants, along with his heir, remain tenants and unless and until all the tenants and all the heirs die the tenancy of the holding subsists.

Therefore I oppose this amendment.

Khan Bahadur Shaikh Masud-uz-Zaman : If we see section 37 we find that this clause provides for the division of tenancy. This makes the position clear that a co-tenant can at any time get his share of the tenancy divided. This clearly shows that the tenancy is a joint tenancy and one of the co-tenants is as independent of the other as his heirs are independent after the succession. So, in this way, it will multiply difficulties for the landlord in case the co-tenants get their tenancies divided, and similarly it is provided in sub-clause (2) of section 37 that a landlord's interest will not be affected. So, again, it is necessary that no such restriction in proviso (b) be made for the landlord to keep the lands in the hands of the co-tenant till five years after the last surviving co-tenant, and it is only fair that he should be allowed to get the tenancy divided on the death of one of the co-tenants and get the benefit of a share of that property.

Babu Nemi Saran : I rise to oppose the amendment moved by Rai Jagdish Prasad Sahib, member from Muzaffarnagar. As far as the amendment goes, I think it creates one simple issue on which the House has got to give its verdict. That issue is this—Is the landlord entitled to get the holdings and the rent paid therefor divided when he wants it to be done to his own advantage, while the tenant cannot have it so divided against the landlord when he might so desire? Section 37 has been quoted by several members of this House in this connexion. Section 37 is clear on one point, the tenants can divide the holding or the rent to be paid therefor amongst themselves only, but that division shall not be binding on the zamindar unless that zamindar is prepared to accept that arrangement in writing. Therefore as far as the division of the holdings is concerned in respect of the zamindar, the tenants are not allowed any hand to have it divided against him and I think the zamindar members too would never like to allow the division of the holdings against their will. If they are prepared to so concede, then perhaps the argument of Rai Jagdish Prasad Sahib in respect of the division of the holding of the heirs of statutory tenants may have some weight. But unless that right is given to the tenant his arguments are on the same basis as when we say that we get it for ourselves when

[Babu Nemi Saran.]

we require anything but we do not allow it to the tenants when they require it for their benefit. And the effect of the amendment of Rai Jagdish Prasad Sahib would be that there would be an indefinite multiplicity of holdings, which every person who has at heart the well-being of agriculture is against. Therefore I think that unless Rai Jagdish Prasad Sahib and his other colleagues who want that this amendment should be passed agree to the amendment of section 37 and give the tenants the right of division of the holdings against the wishes of the landlords, the amendment moved by Rai Jagdish Prasad Sahib should not be supported by the House, as it would be unfair to the tenants. Therefore, I oppose the amendment.

Question, that the question be now put, put and agreed to.

Rai Sahib Jagdish Prasad : I have listened patiently to those who have opposed my amendment, but I must say that I am still unconvinced. Partly my burden has been lightened by my honourable friend, Khan Bahadur Maulvi Fasih-ud-din and so I will not dilate upon the matter further. I will reply to one point only, namely, that the zamindars should not be allowed to divide the holdings against the tenants. I do not see the reasonableness of this view. Because when under clause 37 we are going to provide that a tenant can get his holding divided against other co-tenants, I do not see why a zamindar should not be entitled to get the division of a holding effected against the tenants. I, therefore, press my amendment.

Hon'ble Sir Sam O'Donnell : I think the case has been stated conclusively by Pandit Govind Ballabh Pant. All co-tenants hold under a single indivisible contract. Every co-tenant is the tenant of the whole of the holding. When one co-tenant dies and leaves no heir, then the other co-tenants take the land. They are heirs under the present law to the co-tenants who die without other heirs. But if a co-tenant leaves an heir, why should his right be confiscated? Reference has been made to clause 37. All that that clause says is that one co-tenant may sue another for the division of the holding, but that such division shall not be binding on the landlord without his consent. That clause, therefore, lends no support to the suggestion that the landlord should be entitled to have a compulsory partition, and not only a compulsory partition but that he should be entitled to confiscate the rights of the heirs of the co-tenant.

Question, that the second proviso to clause 20 stand part of the Bill, put and negatived.

Question, that the words—

"Where there are two or more co-tenants of a statutory tenancy the heir of a deceased co-tenant shall be entitled to continue in possession of the land or interest of the deceased co-tenant till five years have expired from the death of the last surviving co-tenant" be inserted as proviso (2) to clause 20, put and agreed to.

Question, that clause 20, as amended, stand part of the Bill, put and agreed to.

Question, that clauses 21 and 22 stand part of the Bill, put and agreed to.

The Council was then adjourned until the following day.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Wednesday, July 7, 1926.

THE Council met at *Sherwood House*, Naini Tal at 11 a. m.
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT : (98).

Hon'ble Sir Sam O'Donnell.	Lieut. Raja Durga Narayan Singh.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.	Raja Narayan Pratap Singh.
Hon'ble Rai Rajeshwar Bali.	Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Hon'ble Thakur Rajendra Singh.	Pandit Sri Krishna Dutt Paliwal.
Hon'ble Nawab Muhammad Yusuf.	Babu Parsidh Narayan Anad.
Mr. G. B. Lambert.	Pandit Yajna Narayan Upadhya.
Mr. E. A. H. Blunt.	Raja Sri Krishna Dutt Dube.
Kunwar Jagdish Prasad.	Rai Sahib Babu Dip Narayan Roy.
Sir Ivo Elliott, Bart.	Rai Bahadur Thakur Hanuman Singh.
Mr. P. H. Tillard.	2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Mr. H. A. Lane.	Raja Indrajit Pratap Bahadur Sahi.
Mr. R. L. Yorke.	Bhaya Hanumat Prasad Singh.
Mr. R. Burn.	Pandit Govind Ballabh Pant.
Mr. A. W. Pim.	Pandit Har Govind Pant.
Mr. B. J. K. Hallows.	Mr. Mukandi Lal.
Mr. E. L. Norton.	Babu Ram Chandra Sinha.
Mr. H. G. Billson.	Raja Shankar Sahai.
Mr. R. J. S. Dodd.	Dr. Jaikaran Nath Misra.
Colonel A W. R. Cosgrano.	Rai Bahadur Thakur Masbal Singh.
Mr. A. H. Mackenzie.	Kunwar Surendra Pratap Sahi.
Mr. M. F. P. Herchenroder.	Khan Bahadur Mr. Muhammad Aslam Saifi.
Raja Muhammad E'jaz Rasul Khan.	Maulvi Zuhur-ud-din.
Raja Bahadur Brij Narayan R.	Rao Sahib Abdul Hameed Khan,
Mr. H. O. Desanges.	Maulvi Shahab-ud-din.
Mr. H. David	Khan Bahadur Chaudhri Amir Hasan Khan.
Babu Khem Chand.	Mr. Muhammad Ismail Ali Khan.
Lala Kishan Lal.	Maulvi Muhammad Obaid-ur-Rahman Khan.
Babu Narayan Prasad Arora.	Khan Bahadur Hafiz Hidayat Husain.
Babu Sangam Lal.	Khan Bahadur Shaikh Masud-uz-Zaman.
Babu Mohan Lal Saksena.	Khan Bahadur Mr. Muhammad small.
Babu Damodar Das	Dr. Shafa'at Ahmad Khan.
Babu Jai Narayan Chaudhri.	Khan Bahadur Saiyid Muhammad Ashiq Husain.
Babu Bhagwati Sahai Bedar.	Khan Bahadur Maulvi Fasih-ud-din.
Thakur Manjit Singh Rathor.	Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Rai Jagdish Prasad Sahib.	Khan Bahadur Hakim Mahbub Ali Khan.
Chaudhri Jawwant Singh.	Khan Bahadur Mr. Ashiq Husain Mirza.
Rai Sahib Chaudhri Sheoraj Singh.	Khan Bahadur Munshi Siddiq Ahmad.
Pandit Nanak Chand.	Qasi Habib Ashraf.
Lala Babu Lal.	Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Thakur Rajkumar Singh.	Shaikh Abdus Samad Ansari.
Thakur Shiva Narayan Singh.	Rai Bahadur Lala Behari Lal.
Rai Bahadur Babu Ram Nath Bhargava.	Rai Bahadur Lala Mathura Prasad Mehrotra.
Rai Amba Prasad Sahib.	Raja Shambhu Dayal.
Rai Bahadur Pandit Kharagjit Misra	Lieut. Raja Sheikh Imtiaz Rasul Khan.
Rai Suryopal Singh.	Raja Jagannath Bahadur Singh.
Lala Dhakan Lal.	Mr. Tracy Gavin Jones.
Babu Nemi Saran.	
Chaudhri Badan Singh.	
Rao Sahib Kunwar Sardar Singh.	
Thakur Sadho Singh.	
Pandit Brijnandan Prasad Misra.	
Pandit Jhanni Lal Pande.	

THE AGRA TENANCY BILL.

CLAUSE 23.

23. (1) The interest of an ex-proprietary tenant, of an occupancy tenant, of a non-occupancy tenant, and of a statutory tenant to the extent provided by section 20, is heritable, but is not transferable either in execution of a decree of a civil or revenue court or otherwise except in accordance with the provisions of this Act.

(2) Nothing in the foregoing provisions of this section shall render it illegal for a tenant—

(a) to transfer to Government his interest in any land which is required for a public purpose ;

(b) to release or transfer his interest in favour of a co-tenant :

Provided that no person shall be deemed to be a co-tenant, notwithstanding that he may have shared in the cultivation of the holding, unless he was a co-tenant from the commencement of the tenancy, or has become such by succession or has been specifically recognized as such in writing by the landholder ;

(c) to sub-let his holding as hereinafter provided.

Babu Sangam Lal : I beg to move that after the word " co-tenant " in sub-clause (2) (b) of clause 23 the words " or presumptive heir " be added.

If honourable members will refer to section 107 of this Bill, they will find that this principle has been conceded in that section, because if a tenant abandons his holding, then his presumptive heir, if he is in possession, can get that holding and it will not revert to the zamindar. Now, if a tenant wishes that in his life-time he should transfer his holding to his presumptive heir, he can do so only in a roundabout way. Under section 107 he can abandon his holding, and his son, if he has a son who will be his presumptive heir, will come in possession. Therefore when you have conceded that principle, I do not see any reason why this roundabout method should be adopted, and why the tenant should not be allowed to transfer his holding in favour of his presumptive heir, because if he happens to die at that very moment, his heir will succeed.

What can be done under section 107 in a roundabout way, I do not think there is any harm in allowing to be done in a direct manner.

Hon'ble Sir Sam O'Donnell : I think this is a departure from precedent and that it infringes the principle of the non-transferability of tenancy. The proviso gives a fair solution. It is reasonable that the landlord should have some say in the matter. It is quite true that under clause 107 (2) a tenant who ceases to cultivate his holding and without executing a written sub-lease leaves in charge of his holding any person belonging to certain classes of heirs on whom, in the event of the tenant's death, the tenant's interest would devolve will, if he does not resume cultivation within five years, lose his interest in the holding, and the person left in charge thereof will succeed to the holding. It might be possible under that clause for the tenant to transfer the tenancy to his heir but the intention of clause 107 is certainly not that he should

make such transfer. Clause 107 is intended to provide for the case of a tenant who is for adequate reasons compelled or finds it necessary to cease to cultivate his holding, puts in his heir and subsequently is unable to resume cultivation. I think therefore that it is better to retain this clause as it stands.

Babu Sangam Lal : The Finance Member has conceded that it is possible under clause 107 for a tenant to transfer his holding but he said that it is not his intention. When this Bill becomes an Act, it will not be for the Finance Member to interpret it according to his intention. It will be left to the courts to interpret it and they will not be bound by the pious wish or the intention of the Finance Member and when it is possible under that section to make a transfer, I do not see any reason why this should not be allowed in a direct manner. If the honourable members will refer to section 12 of the Central Provinces Tenancy Act, they will find that a similar provision exists there. It runs as follows:—

“He may transfer any right in his holding to any co-tenant or person who if he survives the tenant without nearer heirs will inherit his right.”

For the purposes of this section he simply thinks that he is dead and he lets in his heir to succeed. I do not see that there is any departure from the principle of this Bill and therefore, Sir, I press my amendment.

Hon'ble Sir Sam O'Donnell : It is true apparently that under clause 107 (2) a tenant might manage to transfer his holding to his heir. But, as I said before, the object of clause 107 (2) is not to enable him to make such transfer. Its purpose is to provide for the case of the tenant compelled for the time being to leave his holding in charge of one of his heirs, and if the tenant did succeed in the way suggested in transferring his holding, it would be an evasion of the intention of clause 107 (2) and it is quite possible that the courts might hold that the transaction was not a genuine one and would not accept it.

Question that after the word “co-tenant” in clause 23 (2) the words “presumptive heir or relation” be inserted, put and negatived.

CLAUSE 23 (2) (b).

Bhaya Hanumat Prasad Singh : I rise to move that the words “with the written permission of the landholder” be added after the word “co-tenant” in line 2 of sub-clause (b) of clause 23 (2).

The object with which I have placed this amendment before the House is that in the case of a transfer the tenant ought to take the permission of the landholder. This right of transfer is quite a new thing. I do not find a similar provision in either the present Act or in any of the Tenancy Acts which preceded it. But I find that a provision giving a right of transfer to the tenant has been embodied in this Bill. It will have a very bad effect on the good relations between landholders and tenants. Its incorporation is nothing but an encroachment on the legitimate rights and privileges of the landholders. A tenant takes a plot of land from the landholder with a view to cultivate it and when he has to make any transfer, he ought to take the permission of the landholder, because without it, it is quite possible that an undesirable tenant

[Bhaya Hanumat Prasad Singh]

whom the landholder might not like may come in. So it will give rise to bad feeling between them and in the end it will create a great deal of litigation. It is not beneficial either to the landholder or to the tenant. The amendment is very modest and innocent and I hope the House will accept it without any dissentient voice.

Rai Bahadur Thakur Hanuman Singh : I rise to oppose the motion made by my honourable friend Bhaya Hanumat Prasad Singh. He is trying to create obstacles in the way of co-tenants who want to transfer their right in the holding to other co-tenants. Every co-tenant has a joint right to possess a holding. If one of them wants to transfer his right to the other, there ought to be no obstacle in his way and such a transfer should not be subject to the consent of the zamindar. This very Bill provides that when one co-tenant dies, the surviving co-tenants have a right to possess the holding till their death. So there appears to be no logic in the arguments which the mover adduced in support of his motion as to why during the life-time of a tenant he should not be allowed to transfer his share to the other co-tenants. This transfer is very fair and based on equity, so no obstacle, I repeat, should be placed in the way of co-tenants. At the same time it will help the compactness of the holding. The law as provided in the Bill is very fair and just and it should be allowed to remain as it is.

Hon'ble Sir Sam O'Donnell : The honourable member who has moved this amendment is, I think, under a misapprehension. He seems to think that we are proposing to alter the existing law, that is not so. If the honourable members will turn to section 20(2) of Act II of 1901 they will find the following provision :—

“The interest of an ex-proprietary tenant, an occupancy tenant or a non-occupancy tenant is not transferable otherwise than by voluntary transfer between persons in favour of whom as co-sharers in the tenancy such right originally arose or who have become by succession co-sharers therein.”

The principle therefore of this clause is already to be found in Act II of 1901. All that we are doing is to make the position clear. We make it clear that mere co-sharing in the holding is not sufficient. The co-tenant must have been one who was a co-tenant from the beginning or who has subsequently been specifically recognized as a co-tenant in writing by the landlord. I do not see how the interest of the landlord can suffer in any way because the person in whose favour the transfer is made will be a person who presumably is acceptable to him since he was admitted by him as a tenant. In any case we are making no substantial change of any kind in the law. We are merely altering the wording so as to make the position clearer.

Bhaya Hanumat Prasad Singh : The reasoning which the Hon'ble Finance Member has advanced has not been able to convince me. He says that it is embodied in the present Act but I say that a co-tenant gets a plot of land of his fellow-co-tenant when he dies or when it is decreed by the court. But, Sir, I see that there has not been a single instance where the co-tenant has transferred his right in favour of his fellow-co-tenant. **Rai Bahadur Thakur Hanuman Singh** has said that I have moved this motion in order to put obstacles in the way of the tenant. I am sorry he has misunderstood me. I never intended to put

any obstacle in the way of the tenant, but what I mean is that, with the permission of the landholder, every transfer ought to be made, because without it, it will greatly harm the good relations that exist at present between the landholder and the tenant. With these few words I hope the House will accept my motion and I am sorry I do not see my way to withdraw it.

Hon'ble Sir Sam O'Donnell: I think the honourable member has misunderstood the provisions of section 20(2) of the existing Act. That section does not refer to transfers sanctioned by the Court. It merely says that there may be voluntary transfers between persons in favour of whom as co-sharers in the tenancy such right originally arose. Further, Sir, suppose that one co-tenant dies and leaves no heir, the holding passes to the other co-tenant, because every co-tenant is a tenant of the whole holding. Again, suppose that the co-tenant does not die but goes away or that he ceases to cultivate the land, in that case, too, the other co-tenants will remain in possession of the whole of the holding. There is absolutely no point in this amendment.

Question put that the words "with the written permission of the landholder" be inserted after the word "co-tenant" in line 2 of sub-clause (b) of clause 23(2).

The House divided. Ayes, 24; Noes, 39.

Ayes.

Lal Kishan Lal.
Rai Jagdish Prasad Sahib.
Rai Sahib Chaudhri Sheoraj Singh.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Rai Sahib Babu Dip Narayan Roy.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Kaban Bahadur Mr. Muhammad Aslam Saifi.

Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Shaikh Masud-ur-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafiat Ahmad Khan.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Shaikh Abdus Samad Ansari.
Rai Bahadur Lala Bohari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Saif Khan.
Hon'ble Rai Rajeshwar Bili.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott Bart.
Mr. P. H. Tildard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. K. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. B. J. S. Dodd.
Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.
Mr. M. P. P. Herocheuoder.
Raja Muhammad E'jaz Rasul Khao.
Mr. H. O. Desanges.
Mr. H. David.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Damodar Das.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Lieut. Raja Durga Narayan Singh.
Pandit Yajna Narayan Upadhyay.
Rai Bahadur Thakur Hanuman Singh.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Raja Jagannath Bakhsh Singh.

Lient. Raja Durga Narayan Singh: I beg to move that the following words be added :—

“to enable him to transfer his holding in part or in full for a period not exceeding ten years in favour of (1) a registered corporate body, having as its primary aim the protection of the poor and hard-pressed tenantry, (ii) of his sympathetic landlord.”

Hon'ble the President: I must say that the words “poor and hard-pressed” and “sympathetic” will not do in a piece of legislation. These words had better be omitted.

Lient. Raja Durga Narayan Singh: May I move that the words be omitted?

Hon'ble the President: You had better move the clause in a modified form. But before you move it, I want to know where you will fit it in. You do not want it as a new sub-clause?

Lient. Raja Durga Narayan Singh: It will be incorporated in sub-clause (c) or we may have it as a new sub-clause.

Hon'ble the President: You had better move it as a new sub-clause.

Lient. Raja Durga Narayan Singh: I beg to move that a sub-clause (d) be added to run thus :—

“(d) to enable a tenant to transfer his holding in part or in full for a period not exceeding ten years in favour of (i) a registered corporate body having as its primary aim the protection of the tenantry, (ii) of his landlord.”

Sir, my object in moving this amendment [is to help those tenants who are compelled to borrow money from the money-lenders at a high rate of interest. It is apparent that occupancy tenancies go into the hands of money-lenders in large numbers every year. If such a provision is made in this Bill, it will enable a tenant to transfer his holding for a limited period in favour of a registered corporate association, formed preferably on co-operative lines, having as its aim and object the removal of their legitimate needs and the liquidation of their debts by borrowing money at a low rate of interest. If such an association is formed in a district and duly registered, a tenant can borrow money from or transfer his holding in favour of it to pay off his arrears of rent to the zamindar and to meet other necessary expenses of his family, without the risk of losing his holding.

As regards landlords, I have got instances of very many tenants coming and asking the landlords for money in order to meet their legitimate expenses. But there is no such provision in the present Act; hence I suggest that this concession should be given to the tenants. Not every landlord, whatever his attitude, but only those who wish to protect their tenants and pay them money for the liquidation of their debts at a lower rate of interest will be approached. As I have said, Sir, it will not be compulsory on each and every zamindar to undertake such a thing. But those who feel sympathy for their tenants and are inclined to help them should be given a chance to do so by a statute of the law. So I hope my zamindar brothers and Government will accept this sub-clause, because there seems to be no harm if this sort of concession is given to the tenants.

Hon'ble Sir Sam O'Donnell: I sympathize with the object of the honourable mover. I am quite sure that his desire is simply to enable a tenant to obtain money at a low rate of interest which will enable him to tide over a period of difficulty. I am afraid, Sir, however that the acceptance of this amendment will have exactly the opposite result. As for registered corporate bodies having as their aim the protection of tenantry I am not aware that there is any such body in existence at present. I have heard of Kisan Sabhas. But I do not think that Kisan Sabhas are registered corporate bodies.

The second part of the clause, Sir, seems to me to be open to very strong objection. The honourable mover clearly intends that it shall apply only to sympathetic landlords. But unfortunately it is impossible to include that term in an Act.

Lieut. Raja Durga Narayan Singh: I have omitted the word.

Hon'ble Sir Sam. O'Donnell: Yes, he has omitted the words. The intention of the honourable mover is that such transfers shall be made only in favour of landlords who are concerned for the interests of the tenants and not merely for theirs. But he has to omit the word "sympathetic," as it is a word which cannot be included in a statute. And as the amendment now stands at present it applies to any landlord and the result will be that any tenant can mortgage his holding in favour of the landlord whether the landlord is good, bad or indifferent. If he so mortgages for a period of ten years, what is going to become of the tenant? Either he becomes a labourer or seeks his fortune elsewhere, losing all connexion with the land. Or he becomes a sub-tenant of the landlord, holding the land on sub-lease and at a rack-rent. I cannot see that is going to be for the benefit of the tenantry. If a landlord wishes to help a tenant he can do so by remitting the rent, or by suspending the rent or by advancing money on easy terms and recovering it year by year from the tenant. Or, again, the tenant may join a co-operative society himself and obtain money on personal security from the society. I do not think that a provision of this kind is in the least required. I am of opinion on the contrary that it will work in the opposite way to what the honourable member himself desires.

Babu Sangam Lal: I support the amendment which has been moved by the Raja Sahib of Tirwa. The only objection which has been raised by the Hon'ble the Finance Member is that, so far as the first part of it is concerned, there are no such registered corporate bodies which can lend money to the tenants at a lower rate of interest. But, Sir, if such a provision is inserted in the Bill, I think that it will facilitate the growth of such societies in the villages, because neither the Hon'ble the Finance Member nor any member of the Council wants that the tenants should not have money at a low rate of interest when they really require it at least for productive purposes. In fact with this object in view co-operative societies have been started and loans are advanced by the Government itself. Therefore, if such societies are started, they will keep the much abused money-lender at arm's length and will at the same time help the tenants to get money at a cheap rate of interest. The Hon'ble the Finance Member contends that the amendment would have just the opposite effect. In this connexion I should like to draw his attention to certain restrictions which have been imposed on occupancy and ex-proprietary tenants in the Bill. Under the existing Act an ex-proprietary or occupancy tenant can borrow money in order

[Babu Sangam Lal.]

to purchase cattle or for some other necessary object by entering into a *zar-i-peshgi* lease of his holding. Now, the Bill will make it impossible for him to do so. Thus, while on the one hand it has made it impossible for a tenant to borrow money, even for productive purposes, on the other it has imposed unwarranted restrictions on him in the shape of clause 81, which allows a zamindar to eject a tenant for arrears of rent without at the same time giving him an opportunity to increase his credit. The position of an occupancy or ex-proprietary tenant under the Bill can be compared to that of a person, whose limbs have first been amputated and then he is asked to climb a hill. Such a thing is obviously impossible. Similarly, if a zamindar wants to recover his rent immediately, it is very necessary that the credit of the tenant should be increased, of course subject to certain safeguards. I do not say that a tenant may be allowed to borrow money for unnecessary purposes.

Hon'ble Sir Sam O'Donnell : There is no restriction here.

Babu Sangam Lal : The Hon'ble the Finance Member remarks that there is nothing here which will serve as a check against the tenant's borrowing money for unproductive purposes. In this connexion I should like to draw his attention to an amendment, which says that if a tenant wants to borrow money for productive purposes, such as to pay arrears of rent or to purchase cattle or to maintain his family at the time of famine or flood he can certainly do so.

Hon'ble the President : Which is that amendment.

Babu Sangam Lal : No 103, in the name of Pandit Govind Ballabh Pant.

Hon'ble the President : The stage of moving it is over and it cannot come before the House now.

Babu Sangam Lal : I would further refer him to amendment No. 496, which says that an ex-proprietary or occupancy tenant may apply to the assistant collector in charge of the sub-division for permission to mortgage or sell his holding or a portion thereof to the landholder or a tenant of the same village or mahal, and if such assistant collector is satisfied that money is wanted for payment of rent or some other agricultural purpose or maintenance of his family in times of difficulty, he shall grant such permission.

Hon'ble the President : I may issue a warning here. If the verdict of the House is obtained on this amendment here, it cannot be moved later under clause 34, because the same question cannot be raised over again.

Babu Sangam Lal : It will appear that these amendments constitute adequate safeguards against the tenants' borrowing money for unnecessary purposes, and in the circumstances I will advise the Hon'ble Raja Sahib to withdraw his amendment, as his object will be just as well served if he lends his support to amendment No. 496, when it comes before the Council for discussion.

Khan Bahadur Shalkh Masud-us-Zaman : If this clause is inserted in the Bill, it is liable to be misused. Under the present Act the occupancy tenancy is not mortgageable, but to defeat this provision tenants are actually mortgaging it with possession in the name of *zar-peshgi* lease. This *zar-peshgi* lease is nothing except that money is borrowed and a sort of mortgage with possession is given. How far

it is desirable is clear from the fact that often the landlords try to eject the tenant on the ground that he has mortgaged his occupancy rights. The only registered body which at present lends money to the tenants is, so far as I know, the co-operative society, and the objects of the society are certainly very laudable. But, as we know, co-operative societies do not lend money on the mortgage of occupancy rights. If we allow the tenants to mortgage their occupancy rights to borrow money for the purchase of cattle or seed, etc., it would be a very difficult question to decide whether money so borrowed was really intended for the purpose for which it was being borrowed. Very often tenants ask zamindars for money for the purchase of bullocks, but when they get money they spend it on marriages and other things. Who will therefore decide that the money which the tenants want to borrow is really required for such purpose as will help them in their cultivation. The best thing is to leave the matter as it is. Wherever the landlord is sympathetic he will always find means to help his tenants. If he cannot lend money himself, he will ask the co-operative society in his village to help the tenants. If on the other hand the landlord is not sympathetic, any money which is lent on the mortgage of occupancy rights will always be a matter for litigation and the landlord will always come forward to oppose such borrowings. Therefore any clause inserted with a view to allow the mortgage of occupancy rights will be a very dangerous precedent. I think the best way for the societies which are anxious to help the tenantry would be to adopt the course of lending money on the credit of the tenants themselves. My personal experience is that the personal credit of a tenant is by far superior from the point of view of the money-lender than the mortgage of his occupancy or other rights. If the tenant is really honest, and in most cases I am glad to say he pays even those debts which are time-barred, and if the money-lender once sees that his money is safe, the tenant will have no difficulty in getting money. If he is dishonest, none can force the money-lender to lend money. I therefore submit that this proposal must be worked through the sympathetic individuals or societies and must not be incorporated in the Bill. For these reasons I oppose the amendment.

Babu Nemi Saran : In view of what has fallen from the Chair, I beg to move an amendment with the permission of the House.

Add "with the permission of the court" between "him" and "to" in the first line of that amendment of Lieut. Raja Durga Narayan Singh and add (iii) as follows :--

"Of any other tenant of the same village or mahal in order to procure money for payment of arrears of rent and for agricultural purposes."

Hon'ble the President : Technically speaking, notice was given of these words in amendment No. 496. The effect of this amendment, if made in the amendment of Lieut. Raja Durga Narayan Singh, will be to make it run like this :

"To enable him, with the permission of the court, to transfer his holding in part or in full for a period not exceeding ten years in favour of (i) a registered corporate body having as its primary aim the protection of the poor tenantry (ii) of his landlord, (iii) of any other tenant of the same village or mahal in order to procure money for payment of arrears of rent and for agricultural purposes."

Babu Nemi Saran : I think the amendment proposed by me makes the amendment of Lieut. Raja Durga Narayan Singh more reasonable and acceptable to the House. The first safeguard which I have put in is that all transactions under this provision will be allowed only with the permission of the court and not otherwise, and this, I think, would clear many misunderstandings which might be arising in the minds of my honourable friends in this House *re* the provision. No misuse can be made of this section by an extravagant tenant. The words "in order to procure money for payment of arrears of rent and for agricultural purposes" make its scope still more limited. That is to say a tenant shall not be allowed to transfer his holding even with the permission of the court or rather the court shall not give permission unless he shows that he wants money really for payment of arrears of rent or for agricultural purposes. With this safeguard I think all the objections against this amendment would be expelled. The amendment, after safeguarding the interests of the tenants, would help them in times of need and adversity. As you all know, the tenants are not so resourceful and their economic condition is not so good that they can tide over a period of depression. They have got to borrow money, and I think they generally fall into the clutches of money-lenders, who exact a high rate of interest from them. In order to safeguard the interests of the tenants and to keep them away from these money-lenders, it is very necessary that they should get money from men who are in the agricultural profession. If you will look at this amendment, you will find that a tenant can borrow money from only three kinds of persons. The first is a registered corporate body having as its primary aim the protection of the poor tenantry. The rate of interest of this corporate body would naturally be quite reasonable, and thus the tenants will be saved from the clutches of money-lenders, who exact a high rate of interest. We know that wherever the relations between landlords and tenants are good, the former always help the latter even if they are a little inconvenienced and I know the cases of many generous landlords who have helped their tenants in times of adversity. Therefore, I think the landlord is a fit person who can in times of adversity and depression help the tenant without exacting that amount of interest and that amount of unreasonable bargain which any other money-lender, who had nothing to do with the tenant, would have exacted from him. Then the third person whom I have added is another tenant of the same mahal or village. This is necessary, because we know that sometimes it is very necessary for the tenant to get money and the landlord is not willing to pay it, as he might be interested in the ejectment of such tenant and perhaps the tenant wants that some other tenant of the same village whom he knows may lend that money. As the Hon'ble Finance Member has pointed out, these registered corporate bodies are not in existence at present, and, therefore, the purpose of this amendment would be entirely defeated if this third body of persons is not added. We know that there are many tenants who can afford to pay money to another poor tenant and this tenant, because he himself is an agriculturist, would naturally feel more than any other man can possibly feel for the other tenant and he would give money at a reasonable rate of interest and, if necessary, would get his holding at a reasonable price.

Moreover, the other safeguard is that this tenant should be the tenant of the same mahal or village and this is meant for this purpose, that any other tenant of another mahal or village may not be introduced into a holding of a landlord. Naturally, if a tenant belongs to the same mahal or village he is acquainted with the landlord to whose tenant he is lending the money or whose tenant's holding he has acquired. Therefore, the landlord will not be in a worse position than the former tenant.

With the safeguards provided by my amendment, I think it is but meet that this amendment should be passed by the Council in order to give facilities to a tenant in times of depression, so that, instead of losing his holding in times of famine and distress, he may be able to tide over that period.

I therefore move this amendment for the acceptance of the House.

Khan Bahadur Maulvi Fasih-ud-din: I would not have interfered in this debate but for this most skilful amendment to the amendment of the Raja Sahib that has been proposed. Mr. Upadhyia presented us with a proverb that when you have sold the elephant you should not care for the rope. We have really sold our elephant in the shape of having lost our domain over the non-occupancy area, but I submit that we are determined to amuse ourselves with the few ropes that have been left in our hands. This amendment, I think, is only a thin end of the wedge, for gradually making all the tenancies transferable and bringing the occupancy and statutory tenancies up to the level of fixed rate tenancies. That is one fear that I entertain in connexion with this amendment. Now, coming to the amendment itself and discussing it on its merits, the amendment practically means that the tenancies should be transferable for ten years at least in favour of co-operative societies and in favour of landlords. As for the co-operative societies, the Hon'ble the Finance Member has very rightly remarked that there are no co-operative societies which exist for the benefit of the tenants, apart from the Government co-operative department. Now, as to this department, it is chiefly a credit department. It is not meant for taking up cultivation or for taking up land in mortgage. It is more or less a credit department. If we were to accept this clause, then the whole scheme, the whole frame-work of the co-operative department, would have to be overhauled and all the rules would have to be changed. Besides, if the land is to be transferred to a landlord, we know that there are landlords and landlords. There are landlords, I am sorry to confess, though their number is not very large, who are worse Shylocks than the much-maligned village mahajans. The tenant would be nowhere if he were allowed to transfer his land to a bad landlord. The Raja Sahib's amendment originally said that it should be transferred to the sympathetic landlord, but that wording could not come into the law and therefore he had to withdraw it. But the amendment, as it now stands, is rather too sweeping and rather too risky for the tenant himself. It is possible that a landlord who is not very sympathetically inclined may get all the tenants into his grip and may compel them to accept loans at very exorbitant rates of interest. This is a contingency which I think is real and we see examples of it here and there in the province of Agra. I think that this amendment is one of the most drastic amendments that has ever been introduced before this House in connexion with this discussion and so I oppose it.

Rai Bahadur Thakur Hanuman Singh: I seek permission to move an amendment to the amendment which has been moved by Raja Durga Narayan Singh. My amendment is that in line 2, omit (1) before the words "a registered" and omit the second part of the amendment.

Hon'ble the President: You want the deletion of the words "of his landlord."

Rai Bahadur Thakur Hanuman Singh: Yes, Sir. This amendment of Lieut. Raja Durga Narayan Singh as amended by my amendment will be a boon to the tenantry after a time: not at present, because such corporate bodies do not exist in the rural areas or even in the urban areas. But if the amendment will be allowed by this honourable House I may expect that such bodies may spring up. There will be found in the villages men who will join to form associations called corporate bodies, after they have been formed and registered properly. These corporate bodies will be of great assistance to the poor tenantry.

As regards the amendment which has been moved by Mr. Nemi Saran, I have great objection to it. In the first place, I would say that landlords may get an opportunity to get hold of the holdings of their tenants, as has been remarked by my friend Mr. Fasih-ud-din. Then, Sir, landlords will sublet or lease out these holdings after they have been mortgaged to them on much higher rent to other tenants. The prevention of rack-renting is one of the principles of the Bill. Therefore no tenant should be allowed to mortgage his holding even for a short period to his landlord. Mr. Nemi Saran's amendment also permits a tenant to mortgage his holding to other tenants. No doubt such a thing is going on, but it is not permitted by law and is not on a large scale, because those who take the mortgage are very much afraid and the tenant who wants to mortgage his holding does not find a mortgagee easily.

As regards the provision made by Mr. Nemi Saran that the mortgage should be made with the permission of the court; well it will be very difficult for a co-tenant to go to court; at the same time it will create much litigation, because when the tenant who intends to mortgage his holding applies to the court the court will begin to inquire whether there is any necessity for such a mortgage. It will be too expensive for the needy tenant to go to court. Therefore, the amendment as proposed by Mr. Nemi Saran will result in very injurious consequences to the tenant who would like to mortgage his holding. But the amendment which has been proposed by my friend Raja Durga Narayan Singh and as proposed to be amended by me will have very beneficial results in course of time and it will in no way injure the interests of the landlords.

With these few words I propose that the amendment of Raja Durga Narayan Singh be amended as proposed by me.

Lieut. Raja Durga Narayan Singh: I am glad to note that the Hon'ble the Finance Member has at least sympathized with my innocent amendment, but only sympathy will not do. We want something substantial to be done for the tenants. On the other hand, I marked that my zamindar friends, here and there, stated that my amendment, if carried, will result in a most disastrous manner. I never meant when I proposed this amendment that the zamindars will get the opportunity of

rack-renting or anything else of the kind. My idea was simply this, that if a zamindar gave a loan at a low rate of interest to a tenant, the tenant would go naturally to the zamindar and not to the money-lender for the money he requires. If the zamindar, on the other hand, demands more interest, naturally the tenant will not accept a loan from the zamindar. So there is not the slightest fear that the zamindar will charge a high rate of interest. It has also been said that there will be a misuse of this section, because the tenant will go and borrow money in the name of agricultural development, but suppose a tenant or any other person borrows money in the name of a legitimate need and misuses that money, we cannot help it. No one can help the zamindar or any other person if he does not spend his money in a proper way. So I do not see that there is any ground for the fear that the tenant will make a wrong use of the money which he will borrow from the zamindar or any other person. Sir, I am positive that if the Government really wants to help the tenant; if the Government really wishes that occupancy tenants should not be ejected on account of arrears of rent, then the Hon'ble the Finance Member will accept my amendment, because, if this amendment is accepted, the tenant, whenever arrears of rent fall, can go to the zamindar or to such a body and borrow money to pay off the arrears or meet other requirements. Therefore, if the Government really wish to help the tenant in not being ejected for arrears of rent, the Government should accept this amendment.

Hon'ble the President : What is your attitude towards the amendments of Babu Nemi Saran and Rai Bahadur Thakur Hanuman Singh ?

Lieut. Raja Durga Narayan Singh : They are simply refinements of my amendment and as I fear that these may lead to other difficulties, I am not willing to accept them.

Hon'ble Sir Sam O'Donnell : We shall come later to the question of *zar-i-peshgi* leases and also to the question of sub-letting. When we do, I shall have no difficulty in showing that the *zar-i-peshgi* lease is an unmitigated evil. It was the intention of Act II of 1901 to discourage such leases. Similarly, we shall have no difficulty in showing that the restrictions imposed on sub-letting are not excessive. The tenant will be free to sub-let his land for a considerable period, and further, he will be permitted, when sub-letting, to take two years' rent in advance. He can also raise money, of course, in other ways. He can borrow from the co-operative society; he can borrow *tagavi*, or borrow from his banker. If his credit is good, it will not be difficult for him to borrow for genuine purposes.

Lieut. Raja Durga Narayan Singh : On what security ?

Hon'ble Sir Sam O'Donnell : On his personal security. And if he is bankrupt, and has no credit, then neither this provision nor any other provision will be of any help to him. The honourable mover said that if I wished to help the occupancy tenant, I should accept his amendment. If I thought that it would be of real benefit to the occupancy tenant, I would gladly do so, but my belief is that if this amendment is accepted the result will simply be that the tenant will lose his holding for a long period and become a sub-tenant at an excessive rent.

Babu Nemi Saran by his amendment seeks to meet certain difficulties the existence of which he recognizes. On the other hand his amendment seems to me to raise fresh questions. In the first place, I do not see how the court is to determine for what purpose the money is required.

Lieut. Raja Durga Narayan Singh : Which court ?

Hon'ble Sir Sam. O'Donnell : I do not know what court he refers to. He has not said whether the Board of Revenue or the assistant collector is to decide this question. But, whatever the court is, I cannot see that that court will have before it any adequate materials for deciding this point. Either the case would be decided in a summary and entirely unsatisfactory manner, or the court would have to embark on prolonged and intricate inquiries which in the end would probably yield no clear result. And secondly, he also proposes that the tenant should be allowed to transfer for ten years his holding in favour of another tenant without the consent of the landlord. That is a clear departure from the principle that has always been followed in these matters, namely, that tenants cannot transfer to other tenants without the consent of the landlord.

As to the last amendment—I am not referring to sub-leases which are permissible; I am talking of transfers of this kind, mortgages—the last amendment is in a way an improvement but, on the other hand, it leaves the clause entirely vague. It is admitted that there are no registered corporations of the kind in question, and as to co-operative societies, Khan Bahadur Maulvi Fasih-ud-din was entirely correct when he said that these societies were credit societies; they are not societies for lending money on mortgaging of land.

All these amendments, Sir, are amendments which should be rejected by the Council.

Hon'ble the President : The original amendment was that the following new sub-clause (c) be added to clause 23 (2):—

“(c) To enable him to transfer his holding in part or in full for a period not exceeding ten years in favour (1) of a registered corporate body having as its primary aim the protection of the poor and hard-pressed tenantry, (ii) of his landlord.”

Since when an amendment has been proposed that the words “of his landlord” be deleted from this amendment. Another amendment to this amendment has been proposed by Babu Nemi Saran that in the first line between the words “him” and “to” the words “with the permission of the court” be inserted and that the following words be added at the end :—

“or another tenant of the same village or mahal in order to procure money for payment of arrears of rent and other agricultural purposes.”

I shall put these amendments serially.

Question that the words “of his landlord” be deleted from the amendment as proposed by Raja Sahib of Tirwa, put and negatived.

Question that in the amendment proposed by Lieut. Raja Durga Narayan Singh, the words “with the permission of the court” be inserted in the first line, put and negatived.

Question that at the end of this amendment the words “or another tenant of the same village or mahal in order to procure money for payment of arrears of rent and other agricultural purposes” be inserted, put and negatived.

Question put, that the amendment moved by Lieut. Raja Durga Narayan Singh, be inserted.

The House divided: Ayes, 13; Noes, 63.

Ayes.

Babu Narayan Prasad Arora.
Babu Sangam Lal
Babu Damodar Das.
Pandit Nanak Chand.
Babu Nemi Saran.
Pandit Brijnandan Prasad Misra.
Lieut. Raja Durga Narayan Singh.

Pandit Yajna Narayan Upadhyaya.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Villard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. B. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad E'jaz Rasul Khan.
Raja Bahadur Erij Narayan Rai.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Lala Kishan Lal.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryapal Singh

Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Husain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Hashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Lieut. Raja Sheikh Imtiaz Rasul Khan.
Mr. Tracey Gavin Jones.

Question that clause 23 stand part of the Bill, put and agreed to.

CLAUSE 24.

24. (1) When a male ex-proprietary tenant, occupancy tenant, Succession of male tenants. statutory tenant or non-occupancy tenant dies, his interest in the holding shall devolve in accordance with the order of succession given below.

Order of succession.

Class I.—Male lineal descendants in the male line.

Class II.—Widow.

Class III.—Father.

Class IV.—Mother being a widow.

Class V.—Daughter-in-law, being a widow and dependent on the deceased tenant at time of his death.

Class VI.—Brother, being a son of the same father as the deceased.

Class VII.—Daughter's son, being dependent on the deceased tenant at the time of his death.

Class VIII.—Paternal grandfather.

Class IX.—The nearest collateral male relative, descended in the male line from the paternal grandfather of the deceased, who permanently resides in the same village as the deceased or who has so resided for a period of one year immediately preceding the deceased's death.

Provided that where there are two collateral relatives separated by an equal number of degrees from the deceased and both fulfilling the condition of residence, the descendant of a nearer ancestor shall be preferred to the descendant of a more remote ancestor.

Class X.—The co-tenant or co-tenants of the deceased.

Explanation I.—In tracing relationship to the deceased *illegitimate descent shall be excluded.*

Explanation II.—Where there is more than one heir of the same class entitled to succeed, such heirs take as tenants in common except in the case of widows and daughters-in-law, who take as joint tenants *among themselves*

Explanation III.—In reckoning degrees of descent the person from whom descent is to be traced is excluded. The son is related in the first degree, the grandson in the second degree, and so on.

Explanation IV.—In applying the rule of succession laid down in this section regard shall be had where necessary to the personal law of the family concerned, and in particular an adopted son shall be deemed to be the son of his adoptive father, and not of his natural father, where the personal law to which he is subject so requires.

Explanation V.—Where there are male lineal descendants of the deceased tenant in different lines of descent the following rules shall apply :—

- (1) No person whose father or other ancestor in the male line is alive *and entitled to succeed* shall be entitled to succeed.
- (2) Where any person who, if alive, would have been entitled to succeed, has died leaving male issue, such issue shall inherit the share which such person would have taken if alive.

Illustration.

- (a) *A*, an occupancy tenant, dies leaving two sons *B* and *C*, two grandsons *D* and *E*, who are sons of *B*, and a grandson *F*, who is the son of pre-deceased son. *A*'s interest devolves on *B*, *C* and *F* in equal shares to the exclusion of *D* and *E*.
- (b) *A* brother's son is a nearer collateral than a paternal uncle, both being three degrees removed from the deceased, but the former being descended from deceased's father and the latter from his grandfather.

Hon'ble the President : I think we had better take the amendments *seriatim*.

Hon'ble Sir Sam O'Donnell : I think it would simplify the discussion if the whole of Dr. Khan's amendment, which substitutes the provisions of the old Act, is put as a whole.

Hon'ble the President : I think the friends of this clause as it stands in the Bill might like to improve it in such a manner as not to necessitate the deletion of this provision at all.

Hon'ble Sir Sam O'Donnell : If Dr. Khan's amendment is put as a whole, we shall have a clearer issue before us. I have reason to believe that that would simplify the discussion.

Hon'ble the President : The difficulty is that I shall have to put the question in the form "that the words as they stand in Bill stand part." Once the House decides in the affirmative, there is no going back.

Hon'ble Sir Sam O'Donnell : I think it is much more likely that the Council will accept this particular amendment.

Hon'ble the President : A predominant section of the House seems to be in favour of Dr. Khan's amendment. Those who are not in favour of it had better say that they stick to the words in the Bill as they are.

Babu Nemi Saran : We want to amend the words.

Hon'ble the President : The understanding that is given to us is quite clear that a predominant section of the House is in favour of Dr. Khan's amendment.

Babu Sangam Lal : My point is this. Supposing the House agrees to the deletion of the clause as it stands in the Bill and takes up the amendment of Dr. Khan, the members of this House may like to move certain amendments to that amendment.

Hon'ble the President : They can do so. Amendments to the amendment proposed by Dr. Khan will be in order. As there is a difference of opinion, I had better take the sense of the House.

Is it the desire of the House that we should proceed to discuss the amendment of Dr. Shafa'at Ahmad Khan ?

This was agreed to.

Dr. Shafa'at Ahmad Khan : I move that for "clause 24 " *substitute* the following :—

"When a male ex-proprietary tenant, occupancy tenant, statutory tenant or non-occupancy tenant dies, his interest in the holding shall devolve in accordance with the order of succession given below :—

Order of succession.

Class I.—Male lineal descendants in the male line of descent.

Class II.—Widow, till her death or remarriage.

Class III.—Father.

Class IV.—Mother, being a widow.

[Dr. Shafa'at Ahmad Khan].

Class V.—Brother, being a son of the same father as the deceased.

Class VI.—Daughter's son.

Class VII.—The nearest collateral male relative in the male line of descent.

Provided that no such daughter's son or collateral relative shall be entitled to inherit, who did not share in the cultivation of the holdings at the time of the tenant's death."

Hon'ble the President: In order to make the position quite clear I might mention to the House that I wish first to put after the discussion of the amendment whether the clause as reported by the Select Committee stand part of the Bill. If the House says 'no', then the constructive amendment of Dr. Shafa'at Ahmad Khan will be before the House for discussion and further amendments and those amendments will be voted upon.

Dr. Shafa'at Ahmad Khan: I do not think that many words are needed in amplification of my resolution, but I should like to point out that my amendment is based mainly upon the existing Agra Tenancy Act of 1901. It is well-known to the honourable members that the Agra Tenancy Act has worked satisfactorily, and that it has been applied throughout the province of Agra with eminent satisfaction to the parties concerned, there is, however, one flaw in the Act which I have tried to remove. I have added father and mother to the list of the categories which are included in clause 22 of the Act. Then again, Sir, the only difficulty, to my mind, in the present Act was and is that the co-sharing has not been well-defined. The present Bill defines clearly and lucidly this point, and the main objection therefore to the existing Act has been removed. If the honourable members will compare the advantages conferred upon the tenants with the advantages which have been conferred by the Oudh Rent Act of 1923, they will find that the tenants of the Agra province will not in any case be losers, and that they will benefit to a much greater extent than the tenants in Oudh. Before I sit down I should like to make the position of the landlords quite clear. The object of this clause is not to deprive the tenants of any rights which they may have under the provisions of this Bill. There is no desire on the part of any member or party here to deprive the tenants of their rights or to encourage rack-renting. All that we desire is that of the Act, which has worked satisfactorily, section 22 should not be complicated, and that succession should be traceable as clearly and with as great facility as possible.

Khan Bahadur Hafiz Hidayat Husain: While supporting the amendment of my friend Dr. Shafa'at Ahmad Khan I wish to make one or two remarks. The first point is that I do not think that the amendment is happily worded, because the classes enumerated in the order of succession should be exclusive. If you have all these clauses put together, then if a tenant dies there will be competition between all the heirs enumerated in the section. So unless we say here "male lineal descent in the male line of descent" and failing such male lineal descendants widow and then father and failing him mother and failing her so and so, the matter will not be clear. Therefore I should like to add the words.....

Hon'ble the President: Are you moving an amendment?

Khan Bahadur Hafiz Hidayat Husain : I wish to move my amendment. The amendment is :—

“ When a male ex-proprietary tenant, occupancy tenant, statutory tenant, or non-occupancy tenant dies, his interest in the holding shall devolve in accordance with the order of succession given below :—

Class I.—Male lineal descendant in the male line of descent ; failing such male lineal descendant, on the widow ; and failing such widow on the father.”

Hon'ble the President : Why not put in an explanation covering the whole ?

Hon'ble Sir Sam O'Donnell : In Dr. Shafa'at Ahmad Khan's amendment we find the following words, “ the holding shall devolve in accordance with *the order of succession given below.*” Class I, II, III, and so on.

Hon'ble the President : I hope the legal conscience of the honourable member from Cawnpore has been satisfied ?

Amendment by leave withdrawn.

Khan Bahadur Hafiz Hidayat Husain : To class IV I wish to add the words “ till her death or re-marriage ”. It will read, “ Mother being a widow, till her death or re-marriage.”

Hon'ble Sir Sam O'Donnell : While personally, I think, that the provisions in the Bill are an improvement upon the provisions in the existing Act, still I do not regard the difference as of any very great importance. For that reason and also for another reason I am prepared to concur in this amendment. My other reason is this, that if this amendment were to be rejected and we then proceeded to discuss the innumerable other amendments that have put forward there will be serious danger of our going further and faring worse. It is quite impossible to say what order of succession would eventually emerge out of all these innumerable amendments. The scheme of succession in Act II of 1901 is, at any rate, one which is working. It has been interpreted by the courts, its meaning is now clear, and any other scheme with all sorts of changes here and there might be one which in practice would be very much less satisfactory. Therefore, although I personally prefer the provisions in the Bill, I am quite prepared to accept this amendment as at any rate a great deal better than what we might get if all the amendments were put.

Hon'ble the President : There are some words proposed to be added to class IV.

Hon'ble Sir Sam O'Donnell : About the widow, there are the words “ until death or remarriage ” in the amendment.

Hon'ble the President : If the Hon'ble the Finance Member will look at clause 25 (1) he will find that the words ‘ or remarries ’ have been taken out by the Select Committee. The committee say :—“ We have struck out the words ‘ or remarries ’. “ We consider that remarriage ought not to entail forfeiture of a widow's interest. . . . ” I want the House to be clear on this point.

Hon'ble Sir Sam O'Donnell : We shall have to alter clause 25 accordingly. So far as the mother is concerned, I have no objection to the insertion of the words “ till her death or remarriage.”

Mr. Mukandi Lal: Mr. President, you allowed the discussion of the amendment with an extraordinary procedure. . . .

Hon'ble the President: Order, order, the honourable member cannot criticize that, I have asked the House, and the House has decided on the procedure, and there is no use casting any reflection on that. I can not allow the honourable member to refer to that.

Mr. Mukandi Lal: I want to make it clear.

Hon'ble the President: Order, order. I do not want the honourable member to refer to that at all.

Mr. Mukandi Lal: I want your ruling on another point also before I proceed to oppose the amendment of Dr. Shafa'at Ahmad Khan, and that is this. When Dr. Shafa'at Ahmad Khan's proposal comes before us would it be permissible to move amendments to that now?

Hon'ble the President: I said clearly that it would be permissible. Already Hafiz Hidayat Husain Sahib has moved an amendment. The honourable member may do so now or later.

Mr. Mukandi Lal: I desire to oppose the motion of Dr. Shafa'at Ahmad Khan. Sir, I am much surprised indeed at the support lent by the Hon'ble the Finance Member to the proposition of Dr. Khan. The Bill of 1901 has been before the Government for the last 25 years. The Government have been giving its close attention and consideration to the various sections of the Act. They considered the Agra Tenancy Act in 1918 so much so that a draft Bill was actually published. Then they appointed another committee to consider the Agra Tenancy Act and that committee submitted their report in 1924. As a result of the labours of that committee we were presented with a draft Bill that has been before the honourable members of this House for their private consideration. When the Bill was referred to the Select Committee nothing was said about the clause under consideration. The Government should have then pointed out the defects of this clause. The Government has added to the report of the Select Committee a minute of dissent—a thing which is very seldom done. Government has not said anything in the minute of dissent, as regards this particular clause which I consider to be very vital and important clause in the present Bill. In the minute of dissent Government has not told us that they did not agree with the majority of the Select Committee. All of a sudden the Government comes forward to substitute the old section of the Agra Tenancy Bill for the clause proposed by the Select Committee and the earlier committee, and they are telling us now that the findings of the Select Committee were wrong and that. . . .

Hon'ble Sir Sam O'Donnell: On a point of personal explanation, Sir, I did not say that the opinion of the Select Committee was wrong. I said that I personally prefer the provision in the Bill, but I am prepared to accept the amendment because I am afraid we might go further and go worse.

Mr. Mukandi Lal: I did not mean to say that the Government said actually in so many words that the opinion of the select committee was wrong when they came to this decision. All the efforts, all the labours of the select committee, of the committee of 1910, the committee of 1918 and 1924 are practically wasted and now a vital change is going to be proposed. There is a list of order of succession given by the Select

Committee and embodied in the Bill. According to the amendment of Dr Shafa'at Ahmad Khan the widowed daughter-in-law will be barred from succession. Then again the paternal grandfather will be barred from succession. Thirdly, the co-tenant of the deceased will be barred from succession. Think for a moment the consequences of this amendment. On the one hand we have the Government saying in season and out of season that they are the *ma-bap* of the poor and helpless people. Now here is a widowed daughter-in-law who has nobody to protect her and nobody to look after her. The Government tell us that they want to bar this daughter-in-law, this helpless widow, from succession. Secondly, Sir, this very Government may be prepared some time in future to pass some law to protect and help the old and crippled people. As a matter of fact, this is being done in all the civilized countries. In England they are passing legislation to protect the poor and old people. Only the other day a legislation was passed that people who have reached the age of 65 will be given an old age pension. But here the paternal grandfather of the deceased tenant is to be debarred by this Government, while, in other countries, they are trying to protect and look after the old men. With regard to the deletion of the words "paternal grandfather", I beg to submit that it is not just that the Council should debar him from succession. The third omission moved is that of the words "The co-tenant or co-tenants of the deceased". In this connexion I need only refer the Hon'ble the Finance Member to what he has too often repeated in this Council. He says that the Government are looking forward to the time when it may be possible to accord more privileges and rights to the tenants than are contemplated in the Bill. Now, Sir, when the Select Committee has proposed a certain order of succession, which has indeed existed for a considerable length of time, it does not seem fair for the Government to alter it by countenancing the amendment proposed by Dr. Shafa'at Ahmad Khan. The three classes of persons who are proposed to be deleted all require our help, and so I will appeal to the magnanimity of the zamindar members, who profess to be the *ma-baps* of the tenants, not to debar the unfortunate daughter-in-law, the old and weak paternal grandfather and the co-tenant (or co-tenants) of the deceased from the order of succession, but to oppose the amendment of Dr. Shafa'at Ahmad Khan.

Hon'ble the President: May I know from the honourable mover of the amendment what will happen to explanations I, II, III and IV? Will they remain under the amended clause or will they go out?

Dr. Shafa'at Ahmad Khan: They will all go out.

Pandit Nanak Chand: With your permission, Sir, I would like to move the following amendment:—

In class I *add* the words "including an adopted son declared as such in writing by the adopted father," and in class II after the word "widow" *add* the words "or widow of the male lineal descendant in the male line," and, further on, in the proviso for the words "did not share" substitute the words "has not been declared in court to have shared".

By adding the words "including an adopted son declared as such in writing by the adopted father" at the end of class I a good deal of frivolous and avoidable litigation will be avoided. I have come across

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cases where persons who were never adopted have been set up as adopted sons, while in other cases the adoptions of persons who were adopted have been contested by zamindars. I want that if a tenant adopts a son, he may either execute a deed of adoption or he may go to the court and declare that he has adopted such and such a person as his son. The second amendment for the addition of the words "or widow of the male lineal descendant in the male line" after the word "widow" in class II is clear and does not require an elaborate explanation from me. I simply wish to appeal to the generosity of the zamindar members to see that they do make some provision for the otherwise unprovided for widows of the male lineal descendants of the tenants. My third amendment is intended to check frivolous litigation, which very often takes place on the death of some of the tenants. If a tenant has his daughter's son or a collateral relative engaged with him in cultivation, he should declare the fact during his lifetime before a revenue court in order to avoid unnecessary litigation in future. Sometimes it happens that although a daughter's son or a collateral relative has actually shared with the tenant in cultivation, the zamindar contests the claim of the heir, while at other times persons who have never actually shared in cultivation are set up as having so shared. I desire to put a stop to this sort of litigation on either side, because in such cases the courts have to base their judgement not on facts, but on the evidence which is produced before them by the contending parties. In the circumstances, I trust the House will have no difficulty in accepting my motion.

Khan Bahadur Mr. Muhammad Ismail: My friend the honourable member for Garhwal has forgiven me if I say that he has been carried away by enthusiasm. We are not legislating for a charitable society, or drawing up schemes for widows and the crippled. We are legislating here a tenancy law that would be acceptable to tenants and landlords, the two parties mainly interested. If my honourable friend were to move for some enactment by which Government were made to open poor-houses for all disabled persons, he would have my sympathy. But Government have no business to be magnanimous at the expense of the zamindars. My honourable friend has ignored the most important fact that under the personal law of Muhammadans or Hindus the daughter-in-law is not one of the heirs. The business of providing for her is left to the male relations, who are bound to maintain her. Here we have to confine ourselves to the point whether the succession laid down in section 22 has worked well or not. If it has worked well, why should you go on adding one heir after another? The person chiefly interested is the tenant who has cultivated the land. If you are sympathetic, you might provide for his widow. Of course, we have also to provide for his father and mother, because they will have none to look after them. It is not fair to go beyond that. What do we do in the case of private servants? Although they may have served us for life, do we provide for their daughters-in-law? Are the widows of Government servants provided for by the State? Why should the zamindar be made to look after all the widows and orphans? Therefore, my submission is that we ought not to be carried away by imagination. We ought not to lose sight of practical politics. We should, of course, provide for the dependants of the family and Dr. Shafa'at Ahmad Khan's motion makes provision for all that.

Rai Bahadur Thakur Hanuman Singh: The amendment of Dr. Shafa'at Ahmad Khan is such that, if carried by this House, it will cause great hardship to the daughters-in-law and paternal grandfathers. Khan Bahadur Mr. Muhammad Ismail has been pleased to say in his speech that the landlords have made provision for the mother and the father of the deceased tenant. But I do not know what provision has been made for the grandfather of the deceased tenant who requires much more help and support in his old age than mother and father who comparatively must be younger than the grandfather. Daughter-in-law, when married in a family, is entitled to be maintained by that family during her period of widowhood. Every family provides for widowed daughters-in-law. Why should then the law also not provide for her maintenance? The zamindars call themselves landlords and paternal care-takers of their tenantry: any one left in their estates helpless should be supported by them. Of course, there are some who do take care of those who look up to them for support and are in a helpless condition, but their number is so small that they can be counted on one's tips of fingers. The majority of the landlord community tries, whenever, there is a chance, to take away land from their tenants. Under such circumstances, it is necessary that the Government should give their best consideration to the condition in which the daughter-in-law and paternal grandfather will be left after the death of that member of the family who used to support them. Then, I take objection to the words "or remarriage." Remarriage is allowed amongst the Hindus in certain castes, and therefore this word, which is in the amendment of Dr. Shafa'at Ahmad Khan in class II and in the amendment of Khan Bahadur Hafiz Hidayat Husain in class IV should not be allowed to stand part of the Bill. If it is allowed, it will create great hardship on those widows in whose castes remarriage is allowed, because when they are remarried, the land will be taken away by the landlord. I think that they should be allowed to possess the holdings of their husbands till their death. Of course, I am of opinion that the descendants by their second husbands should not be allowed to inherit those holdings. My friend, Mr. Muhammad Ismail has said that we are enacting tenancy law and not poor law. Well that speaks volumes of the sympathies of the landlords towards their tenantry.

With these few remarks I propose that paternal grandfather and daughter-in-law should also be included among those who can inherit the holdings under this section.

As regards co-tenants there is a provision elsewhere which covers their case, so I need not touch that point.

Mr. H David: The common saying is "what is sauce for the goose is sauce for the gander". If the zamindars have been left to enjoy the law of inheritance, as personal law, as given to them by Hindu or Muhammadan law, why should not the same law apply to the tenants? We are going to legislate, we are going to establish a law of succession according to our own ideas and not according to the personal law of the Hindus and Muhammadans.

In the first place, I think, even the Government should have thought that what is sauce for the zamindar is also sauce for the poor tenant. Why should the Government or the legislature adopt a course to establish a new law of succession for the tenants?

Hon'ble Sir Sam O'Donnell: This is an old law.

Mr. H. David: This was also a new law, being not personal law. As to the amendment proposed by Dr. Shafa'at Ahmad Khan I have also to speak on behalf of my Hindu friends. According to the notion of Hindu law, a wife becomes a part of the husband, she is the *ardhangini* of her husband. The wife becomes one not only in soul, but in body too. Therefore, if this is law, I should like to know why should the daughter-in-law be excluded from inheritance? She is cut off from her father's family and she has become part and parcel of her husband, and therefore, after becoming a part of the husband's family she must be provided for. There is no question of charity here. It is the law that if the husband has died and the wife still lives the husband still lives in the wife. If the daughter-in-law had the misfortune to lose her husband why should she be deprived of her right of maintenance? Why should the daughter-in-law be made dependent or go about begging in the street or be compelled to go wrong on losing her husband or father-in-law? On the one side, the Hindus do not allow them to remarry, then why should this cruelty be perpetrated. Why should not the daughter-in-law be allowed any means of sustenance from the family coffers? Therefore, I appeal to the Hon'ble the Finance Member to think on this point, as a Hindu, and such as I am sure he will appreciate the idea of finding a place in this succession of heritage for the daughter-in-law. I appeal for the daughter-in-law. In Oudh she has been allowed succession, and even if there she has not been, I wish that this wrong should be righted at least in Agra and the daughter-in-law be allowed a place in the line of succession of inheritance.

Pandit Brijnandan Prasad Misra: It is a sad belief that the Government has betrayed the tenants at a time when it was least expected of them, but to me their conduct throughout this Bill has appeared to be condemnable and therefore their present move has not come to me as a surprise. The greatest surprise comes to me from the side of the zamindars, who have all along been professing that they have been keeping a very sympathetic heart towards the tenants. But that view seems to be evaporating here in the hills where it ought to have taken a condensed form. My honourable friend, Mr. Muhammad Ismail, has just been asking us if we are legislating here for the poor, or are bestowing or distributing charity. To that I would say that we have not been doing anything else except what the honourable member has been denying. If we had not been distributing charity, what was the necessity for us to secure a fixity of tenure? It was only because we thought that without it the tenants are suffering, and being poor they are not having a permanent living. We have been providing similarly for the zamindars in the form of *sir*, whom we differentiate by providing a higher scale of *sir* for the smaller zamindars. Thus it is quite clear that we have been distributing charity and doing nothing else. We would be distributing charity to the Government also when we come to the roster year. Thus all the parties are poor and all the parties stand in need of charity and doles. However, when we come to the tenants, it is a pity that the zamindars should become close fisted and be inclined to refuse to the tenants the good (*ankush*) having already granted them an elephant. When you have sold off the elephant what is the good of keeping back the *ankush*

You are providing for so many descendants and heirs of the tenants. What was the necessity of making a provision of that kind if it was not to make provision for those persons who depended upon the tenants. One thing seems to be very strange and anomalous. The honourable member who has moved an amendment to this, has inserted the words "widow till her death or remarriage." I do not see why zamindars must be so much afraid of not only the living tenants but even of their ghosts that they would put in the words "till her death". That seems to be absolutely strange. I cannot think how the tenancy could ever devolve on any person after his death. The tenancy could have devolved only as long as the woman was alive. It would not devolve on the widow when she is dead. It is absolutely unjust to preclude the daughter-in-law, and the honourable member who has been justifying this preclusion has been showing that the woman would become dependant upon the family. I should say that the members of the family would not be getting a share unless they came within the prescribed narrow limit of the present table of heirship; because the succession of the tenancy is not to go down in the course of the heirship as prescribed in the personal laws of the tenant. Therefore, the family or all the members of the family would not be deriving any benefit out of this heirship. They would be under no obligation to maintain the widow of the person or the daughter-in-law of the person who leaves no heirship to the estate.

I thought that the words "male lineal descendants in the male line of descent" included the father and grandfather and this was really the meaning given to it in several rulings of the Board of Revenue. The male lineal descendant does not mean the descendant of the person who died, but the descendant that belong to the male line and in this way the father or grandfather were all included in the list. Here unfortunately the phrase 'paternal grandfather' has been placed separately for omission and by this means the oldest man is being excluded, for no other fault than the fault of his infirmity and lack of provision.

We are providing for the father and it seems to me absolutely anomalous and strange that we are leaving the old grandfather to shiver and die in the cold shade of neglect.

As regards the co-tenant, I should like to remind the honourable members of this House of what has been said by the Hon ble the Finance Member only the other day upon a different amendment, that when there are two co-tenants, the whole of the holding belongs to each of them and not in shares of twos or threes differently and separately. It, however seems to be absolutely strange that now in the case of the death of one person, the other person should not be entitled to get the whole of it for himself.

In the end I would like to make an appeal to my landlord friends that when they have conceded substantial concessions to the tenants, it would really be a great pity and they would be losing a great deal of the grace of their concessions if they preclude the few heirs who are to be rightly included in this list and who are the most needy and who must be provided for.

Pandit Govind Ballabh Pant: I regard the amendment of Dr. Shafa'at Ahmad Khan as unfortunate, unfortunate for two reasons. Firstly, I am inclined to think that the language of the present clause in

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the Bill is much more lucid and unambiguous than the amendment proposed by Dr. Khan. The clause in the Act of 1901, relating to sharing in cultivation has given rise to an endless series of suits in which this very question has come up again and again, for discussion and deliberate. By using the language in which it is in the present form it will be leaving the door for litigation wide open. Besides I do not agree with him in substance, and that is the more serious of the two grievances that I have against his amendment. The clause in the present Bill has a history which goes back to more than fifteen years. As may be known to honourable members and as has been stated on the floor of this House more than once, a committee was appointed in 1910 to look into the language of the provisions of the Agra Tenancy Act of 1901, with a view to suggest necessary amendments without in any way upsetting the scheme of that Act. As honourable members were reminded in this House only a few days ago, that committee had a preponderant element of zamindars in it. It consisted of such well-known and respected zamindars as Raja Sir Rampal Singh, Hon'ble Lala Sukhbir Singh, Raja Moti Chand, Nawab Abdul Majid and others. That committee framed a scheme which is embodied in this section of the present Bill. It has the seal of approval of Raja Sir Rampal Singh, Nawab Abdul Majid, Raja Moti Chand and that zealous secretary of the Agra Zamindars' Association, Hon'ble Lala Sukhbir Singh. That Bill was further examined by the Board of Revenue and they in 1918 issued a Bill which again contained this very section. It was further examined by the drafting committee in 1923-24 and they passed it on to this House. Then it was further examined by the Select Committee of this House and they adopted the scheme which had been framed for them by that honourable committee of respected zamindars. In these circumstances, it seems to me, rather unfair to the labours of those gentlemen that we should be discarding a clause which is the result of such close scrutiny and has been before the public for such a long period of time. Not only that, but in the meantime an inquiry was held by Mr. Hoskins all over the province and he was, further satisfied that this was the provision that would meet the exigencies of the situation. In the circumstances unless there is an overwhelmingly strong demand for altering that provision, there should be no important change in the clause as it stands at present in the Bill. On these grounds, *prima facie*, I am not inclined to accept any amendment or change in any respect whatsoever. But I find that the amendment proposed by Dr. Khan is also inequitable. It leaves aside the daughter-in-law, the paternal grandfather and others. So far as the paternal grandfather is concerned, out of regard for his age and infirmity I am prepared to leave him out of the arena of polemics and controversies here. As to others, I think it is absolutely necessary that they should find a place in this clause, and I think that even if the honourable members sitting over there are not prepared to be moved on grounds of charity, there is another ground which I know and believe they cannot but respond to, and that is of chivalry. Are they prepared to discard these widows whom there is nobody to protect, who are helpless, whose husbands have died, and whose fathers-in-law have died, and who have no means of sustenance in that age, in that juncture and in those helpless circumstances? I appeal to them as I have an innate faith in their

sense of honour; I appeal to their sense of chivalry and ask them if they do not think it desirable that the widow and the daughter-in-law, when there is nobody else to support them should be provided for through the holdin which belonged to him who maintained them during his lifetime. I trust in this case my appeal will prove effective as I know they have as large a soft corner for the widow and the daughter-in-law as anyone else can have. Sir, I am not prepared to accept the amendment of Dr. Khan in so far as it reintroduces the expression "sharing in the cultivation," and I want to have a simpler formula which would enable the courts to determine facts in a more summary manner and without putting the parties to the necessity of leading an amount of evidence on a subtle point which has been interpreted in many more ways than equity, which varied with the Chancellor's foot, was in the court of equity in England. So, firstly, I may make my position clear. When the motion for the deletion of this clause is put, we will oppose it; we will ask that the clause as it is should stand as part of the Bill. Failing that I propose an amendment and I hope it will serve as a halfway house between the amendment proposed by Dr. Khan and the provision in the Bill and will remove the anomaly which would prove equally harmful to the zamindars and to the tenants. I leave amendment No. 1 as it is. In No. 2 I propose instead of "widow till her death or remarriage" "widow during her lifetime or until she leaves the village in which the holding is situated on her remarriage." In No. 3, I do not disturb the father. In No. 4, I leave "mother being a widow" as it is. It shocks my susceptibilities, I may tell the honourable gentlemen, to add the words "till her remarriage" to the mother's name. No. 5, daughter-in-law. I add it as a new clause.—"Daughter-in-law being a widow and dependent on the deceased at the time of his death, until she leaves the village on her remarriage". Clause 5 "brother being a son of the same father as the deceased." I leave as it is. Then for daughter's son, I put "Daughter's son dependent on the deceased tenant at the time of his death." Instead of saying "share in the cultivation" I think it will be simpler for the courts to arrive at a finding in the matter than to enter into the question of co-sharing in cultivation if we say "The nearest collateral male relative in the male line of descent who has resided in the village of the deceased or cultivated land therein at least for a year before his death."

An Honourable member: Immediately preceding his death.

Pandit Govind Ballabh Pant: My friend corrects me. I think it will be more precise to say "at least for a year immediately preceding his death", for "before his death." Might mean at any time before his death. No. 9, I leave it as it is. I will give the reasons briefly for some of these amendments. Some I have already commented on in passing. As to "widow during her lifetime or until she leaves the village in which the holding is situated on remarriage" I may remind the honourable members of the fact that it has been observed by courts as well as by the public that because of the provision which says that a widow will be entitled to remain in possession of her husband's holding only until remarriage we have given ground for and have provoked corruption because a widow who is not inclined to lead a chaste life apprehends that if she remarries ostensibly then she will be losing her holding and, on the other hand, one cannot possibly control her weaknesses, however desirable it may be. In the

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circumstances it has been observed that sometimes widows lead a corrupt life and are forced to do so simply because of this provision which says that they can remain in possession only so long as they do not remarry. I think I am making a very reasonable proposal when I say that so long as she does not leave the village on her remarriage she may be allowed to continue in possession of the holding. But as soon as she goes away after her remarriage then she should have nothing to do with it though she may be alive. In this case it will come in between the present provision and that one which is proposed by Dr. Khan.

Mr. H. David : What if she remarries and stays in the same village?

Pandit Govind Ballabh Pant : Well, she continues in possession. If you say that she will live in the same village and not remarry, then it only means this that she can carry on a sort of intrigue with somebody living in the same village and be in charge of the holding. Instead of that let her not be coerced into corruption by a provision of law. It is immoral to make a provision of that character.

Then, Sir, I come to "daughter-in-law being a widow and dependent on the deceased at the time of his death until she leaves the village on her remarriage." My friend, Mr. Ismail, observes that a daughter-in-law has no right of inheritance under the Hindu or Muhammadan law. When we are not observing the personal law of inheritance, I think it is no use dragging in the canons of inheritance of either the Hindu or the Muhammadan law for we cannot have it "Heads we win, tails you lose." If you introduce the personal law of inheritance, thereby you altogether exclude the possibility of the holding ever reverting to the zamindar because there will be some heir or other, however remote he may be, on whom the holding will devolve on the death of any tenant. So by excluding that law I think the legislature is making a provision for the benefit of the proprietors. If ever they are prepared to amend the whole clause and to say that inheritance should be in accordance with the personal law of inheritance I for one have no objection and I appeal to the Hon'ble the President to admit such an amendment even at this stage. I did not do so myself lest it should be said that I am making a revolutionary proposal, but all the same, a daughter-in-law has the right of maintenance under the Hindu law and when a proposal is being made entitling the daughter-in-law to remain in possession only practically so long as she earns her living through that holding, it does not in any way differ in substance from the Hindu law as it exists today. I am not prepared to question the statement of Mr. Ismail about the Muhammadan law, so I keep quiet over that.

As to the daughter's son dependent on the deceased tenant at the time of his death and collateral male relative, as I said at the outset, I do not in substance differ from the amendment as it is embodied in Dr. Khan's amendment, but I hold that that will lead to a crop of litigation and when revenue courts have to determine these matters and when our experience has demonstrated that the language of the Act of 1901 in this respect is very defective, we should profit by our experience and introduce something which will be simpler and more easy to determine. It was very uncharitable on the part of Mr. Ismail to talk of charitable societies and to discard all those who deserve his

sympathy. He is a broad-minded man, I know it quite well. Then, Sir, while talking of charitable societies he advocated the principle of escape with the death of the owner or the holder of any interest in property, he was thus opening the way for converting all into orphans and orphans for it you introduce the principle that the rights of people will come to an end, whether they be of an ampler or of a narrower sort, with their death, then certainly all who were dependent on them will have in course of time to resort to poor-houses and to alms-houses.

That I do not think he meant to suggest in any seriousness. After all we have to see to it that people are protected from the disgraceful methods of begging and it is one of the duties of the State to protect the people from that contingency which drives them to the poor-houses or to the orphanages as begging is not a laudable thing even in India. But if you do not make provision for these people in a reasonable way then you are certainly forcing them to resort to and the State to open out such houses so that they may make both ends meet. I do not think that I should take more time. It was I do think cruel on the part of Mr. Muhammad Ismail to have said whether we mean to treat a tenant better than as servant. I hope there is some distinction, however, little it may be, between a tenant and a servant. An ex-proprietary tenant is one who was once a proprietor and an occupancy tenant is one who has interests of a far-reaching character and even a non-occupancy tenant is a person who has certain rights, however limited they may be. As to a servant but well I shall be glad if he gets a status approaching that of a tenant, if he drags down a tenant to level of a servant then I have my quarrel with him.

At this stage the Council adjourned for lunch.

After recess—

Khan Bahadur Hafiz Hidayat Husain : I have no intention of inflicting a long speech. I only want to say a few words regarding the amendments that have been proposed by my friend from Bulandshahr and also my friend from Naini Tal. My friend from Bulandshahr has tried to insert . . .

Hon'ble the President : Order, order. I think the honourable member has already spoken once during the course of this debate.

Khan Bahadur Hafiz Hidayat Husain : I only moved my amendment and reserved my remarks to a later stage.

Hon'ble the President : I am afraid it is not permissible.

Lieut. Raja Durga Narayan Singh : I had no mind to take part in this debate, but what prompted me to do so is the omission of a claimant who deserves due consideration at our hands. The case here, Sir, is of daughter-in-law. As it was pointed out by Mr. David that a daughter-in-law when she becomes widow is left helpless to go from one door to another. We see in our daily life that such widowed daughters-in-law for want of bread do such undesirable things which are beyond our imagination. We are daily marking that they commit such acts which in my humble opinion are shameful to the community to which those daughters-in-law belong. If you want to improve our morals, if you want to improve our society, if you want to improve those persons on right lines, then it is but right for us to give them every sort of concession. I do not question here, whether the right of a daughter-in-law is provided for in the Oudh Rent Act ; it may be an omission.

Mr. H. David : It is provided.

Lient. Raja Durga Narayan Singh : But here, when we see such things it is but just that this clause should be added to this Bill. There is no question of Hindu or Muhammadan interests here in this Council ; we ought to respect that person, to whichever community she belongs ; we ought to see that she does not go to other persons's door for her bread. It has just been remarked that for such persons poor-houses will be opened. I shall be too glad, Sir, I shall be ready to subscribe to the fund and I shall be ready also to work honorarily if such a movement is started to start poor-houses in each and every district. When such poor-houses are started in each and every district I shall be the first person to move an amendment to the clause, and it will be just for us to omit that clause when there is sufficient provision for the ladies in each district. But Hindus and Muhammadans cannot bear to see that our sisters, our mothers and our daughters should go begging from door to door. It is not shameful in India only ; but this is laughed at in other countries as well. So to wipe out this blot, I would request my zamindar brothers to ungrudgingly accept the amendment of Pandit Govind Ballabh Pant.

Raja Indrajit Pratap Bahadur Sahi : I rise to give my full support to the amendment moved by Dr. Khan. I have no mind to go into the details of this amendment. As I find that the succession clause proposed has so far been in practice and worked out very successfully, and as they have no complaints about it we should stick to it. Though the new clause might prove better in the long run, still I can say that it is no doubt very complicated and will lead to series of litigation. The less the litigation the better for the zamindars and the tenants. But there is only one thing which strikes me to be of vital importance. I am glad to find that the mover of the resolution has included the father and the mother. This should no doubt have been provided. It is very disgusting to find the old father and mother of the tenant being deprived of the fields which their sons were in possession of.

With regard to the inclusion of daughter-in-law a lot of discussion has already taken place. I quite appreciate the principle and I may say that it is rather very cruel that neither in Hindu law nor in the Tenancy Bill any place has been left for the daughter-in-law. There is no reason why she should not be supported and provided in the family where she has been living. I regret very much indeed to find that according to the Hindu law when there is no heir the property could even revert to the State or some distant claimant, but there is no provision for the daughter-in-law. I regret very much indeed that this should be so. It has been said that Hindu law or Muhammadan law should not be discussed under the Tenancy Act which has no connexion with them. I must confine my remarks only as far as the Tenancy Bill is concerned. As I have already said, the Bill which is proposed to be passed has provided for such lengthy succession that it will lead to disastrous litigation. I am glad that the Government is also inclined to accept the old succession list which was in the old Bill. The proposal that the father and the mother should be included has been accepted by the Government. I submit that if the provision regarding the daughter-in-law till her death or remarriage is included in Dr. Khan's amendment I think it will be accepted by all parties. I think we, the zamindars, as a whole, will support it along with the members of the swaraj

party; of course only on the condition that the daughter-in-law be allowed to continue only till her remarriage. In that case no body will have any objection to that and I hope the whole House will support it.

Dr. Shafa'at Ahmad Khan : My amendment has aroused a storm of criticism which I confess I did not expect. One outstanding feature of the debate has been the discussion with regard to the absence of the daughter-in-law from the amendment. I should like to ask the supporters of this motion where the daughter-in-law was during the last 25 years when the Act has been in operation? Where has she gone all these years? Could you not find her during this long interval? Why did not my honourable friends who have urged her claims so fervently do anything for her during the last fifty years? Why should this excuse be trotted out today when we are going to discuss this amendment? I would suggest to the members that it is only an excuse for the purpose of defeating this amendment.

I do not think that the deletion of daughter-in-law will affect any portion of the community. She has been provided and she will always continue to be provided by her own relations, and so she need not be included in the order of succession.

Lastly, a very fervent appeal has been made by the leader of the swaraj party to the generosity of the zamindars. In this connexion I should like to put a question to him. Have not the Agra zamindars shown enough generosity on the fundamental point, namely, the conferment of statutory rights on the tenants? Have they as a body ever opposed such rights? Let me recall to him what happened yesterday. The zamindars, according to my calculations, lost about five crores, owing to the rejection of amendment of their motion to exempt seven year leases from section 19. We are resigned to our fate. There is no good in crying over spilt milk. We must bow to the decision of the majority, even though it be of two. We honestly feel that we have conceded enough to the tenants, but we cannot concede any more. There is a certain irreducible minimum, and I submit that a point has been reached when further concession will seriously affect the zamindars of these provinces. With these words, I commend my amendment to the acceptance of the House.

Hon'ble Sir Sam O'Donnell : As I said before, I personally prefer the clause in the Bill to the amendment. At the same time it does seem to me that the differences between the two have been exaggerated. The case of the paternal grandfather, I think it will now be admitted, is negligible. The case of the daughter-in-law is not so rare; but is still rare. Moreover, as Pandit Govind Ballabh Pant has pointed out, there will always be some male collateral descendant who will be entitled to the tenancy. And in that case we need not fear that the daughter-in-law will not be maintained. In regard to the co-tenant, the case law is quite clear. His rights will not suffer. The adopted son, although not expressly mentioned in Act II of 1901 or in this amendment, will also be an heir. The case law on that point is also quite clear. I agree that the words "share in the cultivation" have given rise to disputes. I am not sure that the conditions laid down in the Bill are altogether free from the same difficulty. There will, e.g., be disputes regarding "being dependent" and "permanently resides." Probably there will be less dispute if we adopt the clause as in the Bill,

[Hon'ble Sir Sam O'Donnell.]

but I do not regard the difference even on that point as very vital or important, and that is why I said I would be prepared to concur in the amendment moved by Dr. Shafa'at Ahmad Khan.

Question put, that clause 24 as reported by the Select Committee, stand part of the Bill.

The House divided : Ayes, 26 ; Noes, 62.

Ayes.

Mr. H. David.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksena.
Babu Damodar Das.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Ohaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.

Pandit Jhanni Lal Pande.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhya.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Maulvi Zahur-ud-din.
Qazi Habib Ashraf.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. E. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad E'jaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Mr. H. C. Desanges.
Babu Khem Chand.
Babu Kishan Lal.
Rai Jagdish Prasad Sahib.
Ohaudhri Jaswant Singh.
Rai Sahib Ohaudhri Sheoraj Singh.
Lala Bebu Lal.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.

Raja Suryapal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Raja Narayan Pratap Singh.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-us-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Hussain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Lieut. Raja Shaikh Imtiaz Rasul Khan.

Question, that the words "including an adopted son declared as such in writing by the adoptive father," be inserted in class I, put and negatived.

Question, that the words " widow till her lifetime or until she leaves the village in which the holding is situate on her remarriage " in class II be inserted.

The House divided: Ayes 26; Noes. 60.

Ayes.

Mr. H. David.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksena.
Babu Damodar Das.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nacak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Sran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.

Pandit Jhanni Lal Pande.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhya.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Pandit Hari Govind Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Maulvi Zahur-ud-din.
Qazi Habib Ashraf.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Riteshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad F'jaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Mr. H. C. Desanges.
Babu Khem Chand.
Lala Kishan Lal.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.

Rai Amba Prasad Sahib.
Raja Suryapal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Raja Narayan Pratap Singh.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Raja Sri Krishna Dutt Dubo.
Rai Sahib Babu Din Narayan Roy.
2nd-Lieut. Sahibzada Bavi Pratap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Kr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Hussain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mabbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abius Samad Ansari.
Lieut. Raja Shaikh Imtiaz Rasul Khan.

Question, that the words " or widow of the male lineal descendant in the male line " in class II be inserted, put and negatived.

Question put, that the words "till her death or remarriage" in class IV be inserted.

The House divided : Ayes, 5 ; Noes, 76.

Ayes.

Rai Sahib Chaudhri Sheoraj Singh.
Maulvi Shahab-ud-din,

Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-us-Zaman.

Shaikh Abdus Samad Ansari.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hollowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Muhammad E'jaz Rasul Khan.
Mr. H. O. Desanges.
Mr. H. David.
Babu Khem Chand.
Babu Kishan Lal.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksena.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryopal Singh.
Lala Dhakau Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.

Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Pande.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhya.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Pandit Govind Balabhai Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Rai Bahadur Thakur Mashal Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Kunwar Ismail Ali Khan.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Safat Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Hakim Mahbub Ali Khan.
Qazi Habib Ashraf.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Shambhu Dayal.
Lieut. Raja Shaikh Imtiaz Rasul Khan.

Question put, that the words "daughter-in-law being a widow dependent on the deceased at the time of her death until she leaves the village on remarriage", be inserted as a new class.

The House divided : Ayes, 29 ; Noes, 55.

Ayes.

Mr. H. David.
Lala Kishan Lal.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksena.
Babu Damodar Das

Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Lala Babu Lal.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.

Ayes.

Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Pande.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Arad.
Pandit Yajna Narayan Upadhyay.
Rai Bahadur Thakur Hanuman Singh.

Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukand Lal.
Babu Ram Chandra Sinha.
Dr. Jankaran Nath Misra.
Rai Bahadur Thakur Mashal Singh.
Maulvi Zahur-ud-din.
Qazi Habib Ashraf.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
M. E. L. Norton.
Mr. H. G. Bilsen.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochran.
Mr. A. H. Mackenzie.
Raja Muhammad Ejaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Mr. H. C. Desanges.
Babu Khom Chand.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Shaoraj Singh.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryopal Singh.

Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Raja Narayan Pratap Singh.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Raja Sri Krishna Dutt Dubey.
Rai Sahib Babu Dip Narain Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Sayid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abdus Samad Anzari.
Lieut. Raja Shaikh Imtiaz-Rasul Khan.

Question, that the words "daughter's on dependent on the deceased tenant at the time of his death," be inserted as class VI, and the words "who has resided in the village of the deceased or cultivated land there in at least for a year immediately preceding his death," be inserted as class VII, put and negatived.

Question, that a new class "co-tenant" be inserted, put and negatived.

Question, that the words "did not share" and "has not been declared in court have shared" be omitted from the proviso, put and negatived.

Question, that the following be inserted as clause 24, put and agreed to.

"When a male ex-proprietary tenant, occupancy tenant, statutory tenant, or non-occupancy tenant dies, his interest in the holding shall devolve in accordance with the rules of succession given below."—

*Order of succession.**Class I.—Male lineal descendants in the male line of descent.**Class II.—Widow, till her death or remarriage.**Class III.—Father.**Class IV.—Mother, being a widow.**Class V.—Brother, being a son of the same father as the deceased.**Class VI.—Daughter's son.**Class VII.—The nearest collateral male relative in the male line of descent :**Provided that no such daughter's son or collateral relative shall be entitled to inherit, who did not share in the cultivation of the holdings at the time of the tenant's death."*

CLAUSE 25.

25. (1) When a female ex-proprietary, occupancy or non-occupancy tenant who has inherited an interest in a holding under section 24, or the female heir of a statutory tenant dies or surrenders or abandons such interest, such interest shall, notwithstanding anything contained in section 35, devolve upon the nearest surviving heir of the last male tenant, such heir being ascertained in accordance with section 24.

(2) When any female ex-proprietary, occupancy or non-occupancy tenant other than one subject to the provisions of sub-section (1) dies, her interest in the holding shall devolve—

(a) on her male lineal descendants in the male line in accordance with the provisions of section 24 ;

(b) if there are no such descendants, on her husband ;

(c) if there are no such heirs as abovementioned, on her daughter's son provided that he was dependent upon the deceased tenant at the time of her death.

(3) When a female statutory tenant dies her interest in the holding, subject to the limitation of section 20, shall devolve as in sub-section (2) of this section.

(4) The explanation to section 24, so far as they are applicable, shall apply to succession under this section.

Hon'ble Sir Sam O'Donnell : I beg to move certain amendments which are consequential on the decision of the Council regarding clause 24. They are as follows :—

That in line 5 of clause 25(1) after the word "interest" the words "or in the case of a widow of class II in section 24 remarries" be added.

That in clause 25(2) (a) the words "in accordance with the provisions of section 24" be deleted.

That in lines 2 and 3 of clause 25(2)(c) for the words "dependent upon the deceased tenant at the time of her death" the words "sharing in the cultivation of the holding at the time of the tenant's death" be substituted.

That clause 25(4) be deleted.

Question, that the above amendments be made, put and agreed to.

Question, that clause 25, as amended, stand part of the Bill, put and agreed to.

CLAUSE 26.

26. No person shall be deemed to have an interest in an expropriatory, occupancy, statutory or non-occupancy, tenancy merely by reason of being joint in estate with any person with whom a contract of tenancy has been made, or who has succeeded to the interest of a tenant, or who has become a tenant by operation of law or otherwise; and except as provided in explanation II to section 24 or under class X of the same section, no interest in any expropriatory, occupancy, statutory or non-occupancy tenancy shall pass by survivorship. Where the persons possessing such interest are joint in estate, they shall be deemed for purposes of succession to be tenants in common.

Hon'ble Sir Sam O'Donnell : I beg to move the following consequential amendments.

That in lines 7, 8 and 9 of clause 26 for the words "as provided in explanation II to section 24 or under class X of the same section" the words "in the case of widows or of a co-tenant who dies leaving no heir entitled to succeed under section 24" be substituted.

Question, that the words "as provided in explanation II to section 24, or under class X of the same section" stand part of the Bill, put and negatived.

Question, that the words "in the case of widows or of a co-tenant who dies, leaving no heir entitled to succeed," under section 24, be inserted, put and agreed to.

Pandit Govind Ballabh Pant : I move that clause 26 be supplemented by these words in the end :—

"Where a holding is, in fact, held by the members of a joint family all the members who are partners in cultivation will be deemed to be co-tenants even if the name of only one of them is entered in the register."

If honourable members will be pleased to read section 26, they will find that its language is very complicated and is likely to be misunderstood by the courts whenever questions to which this section applies come before them. They will see that in the first part of the clause we have this, "No person shall be deemed to have an interest in an expropriatory, occupancy, statutory or non-occupancy tenancy merely by reason of being joint in estate with any person with whom a contract of tenancy has been made." Then they will find that in the second part of the clause it says "No interest in any expropriatory, occupancy, statutory or non-occupancy tenancy shall pass by survivorship." Then in the third part it says, "Where the persons possessing such interest are joint in estate, they shall be deemed for purposes of succession to be tenants in common." If they will scrutinize the language of the three clauses which I have just read, I feel certain that they will be satisfied that they do not quite fit in with each other, and even if they do they are likely to be misunderstood. By adding this clause, which is merely by way of explanation I am making an effort to clear up the language. If they will read the last sentence they will see it says "Where the persons possessing such interest are joint in estate, they shall

Pandit Govind Ballabh Pant.]

be deemed for purposes of succession to be tenants in common." Higher up it says that interest will not devolve by survivorship. Still higher up it says that "No person shall be deemed to have an interest . . . merely by reason of being joint in estate with any person with whom a contract of tenancy has been made." In order to remove any likelihood of any misunderstanding, to the extent it is possible to do so, I am moving this amendment. Honourable members will please note that I am confining the interpretation of the word "co-tenant" to such members of the joint family as are actually partners in cultivation. So I am carrying out the real object of the section. I hope there will be no objection. I do not therefore dilate upon it further at this stage.

Mr. B. Burn : The amendment which has been moved by the honourable member for Naini Tal appears in some ways to misinterpret the state of things which exists and in other ways to be unnecessary. We have really three cases. The first case is where the holding once belonged to a common ancestor and there are several descendants, only one or some of whom may be recorded as tenants. If these descendants have not at any time separated then they are co-tenants and they are entitled to have their names entered, if necessary. The second case may be, where two people were admitted and for some reason or another the name of one or the names of his heirs have been omitted. In that case, if there is still joint cultivation, there is no doubt at all that the holding is held by those people as co-tenants. But it is probable, I think, that the honourable member for Naini Tal is referring to another case. It is open to a zamindar, if he pleases, to enter into an engagement with only one member of a Hindu joint family to be his tenant in a field. The thing is done every day. Sometimes the other members of a family may join in the cultivation, but the contract with the zamindar has been made by one member of the family in his own individual capacity. The addition proposed by the honourable member for Naini Tal would then saddle zamindar with all members of the joint family as the tenant. It really should be a question of fact to be decided in each case what contract the zamindar actually made when he admitted the tenant. This clause, if accepted, would apparently bind the zamindar to take in the whole joint family. That goes farther than the Bill proposes and it appears entirely unnecessary.

Pandit Govind Ballabh Pant : I submit that the clause in the Bill as it stands does not clearly carry out what has been stated by the Senior Member of the Board of Revenue and I do not exactly understand what this section means when it says that person by reason of being joint in estate will not be considered joint in a contract of tenancy nor will any interest pass by survivorship. This is likely to be interpreted in such a manner as to exclude even those who are admitted by the Senior Member of the Board of Revenue to be entitled to the benefit of the tenancy. For, if there are two or three persons who held a holding jointly and the name of only one of them is entered I apprehend that ordinarily this section will be interpreted in the sense that only the man whose name appears in the register is the tenant and others because they are joint in estate or joint in cultivation are not entitled to the benefit of tenancy. This, I fear, is the interpretation likely to be put on this clause. Then, he has not, I fear, carefully read my

amendment. It says "where a holding is in fact held by the members of a joint family all the members who are partners in cultivation will be deemed to be co-tenants." Of course, it will be a question of fact whether a holding is in fact held by the members of a joint family or not, but there will be another question of fact, even assuming it is held by the members of a joint family—whether they are partners in cultivation. So I do not see any difficulty in the way of my amendment being worked by courts. If it is meant to be the law that wherever a holding is really held by a joint family, it should not matter whether the name of one or more tenant appears in the register, it reactly gives expression to that idea. In all likelihood, the interpretation that will be placed on clause 26 will be to the effect that only the man whose name appears in the register is entitled to the tenancy and none else. I submit that if a zamindar enters into a contract of tenancy with another person by virtue of which he stipulates that only that member will be the tenant and no other, then in that case the holding cannot be regarded as being in fact held by the members of a joint family. It is only when it is proved that it is held by the members of a joint family that this amendment can apply. Now, what I imagine is that in the case of a joint family the contracts are entered into mostly through the manager of the joint family; he may be the father, or the eldest brother or he may be the uncle, but whoever he be, it is generally the head of the family who enters into all contracts on behalf of the family and all the contracts that are entered into by such a head are binding upon the other members of the family. I fear that great injustice will be done if under this class other members of the family are excluded from the benefit of the contract. It is to meet such cases that I have proposed this amendment and I still feel that it is a necessary amendment and should find a place in the Bill.

Hon'ble Sir Sam O'Donnell: I think the honourable member for Naini Tal and we are to some extent at cross-purposes. He seems to have the same object as we have, but our contention is that this amendment will not carry out that purpose. The amendment runs "Where a holding is, in fact, held by the members of a joint family all the members who are partners in cultivation will be deemed to be co-tenants..." The contention, as I understand it, of the honourable member for Naini Tal is that the words "where a holding is, in fact, held by the members of a joint family" are equivalent to "where a holding is held by members all of whom have actually been admitted by the landlord." Well, I submit that that is not the interpretation which would be placed upon these words by the courts. The courts would certainly say, in my opinion for what it may be worth, that where a holding is in fact held by the members refers to the case only of the members of a joint family who are cultivating the land. Our point is that only those persons are tenants who have actually been admitted by the landlord, or who are heirs of persons who have been admitted. The mere fact that they are cultivating the land ought not to give them a share in the tenancy. That is our point, and I think that the honourable member for Naini Tal agrees with us in substance. The difference between us is simply this: that he in his amendment uses language which in our opinion would have the opposite result and would be interpreted by the Court in a different way.

Question, that the amendment moved by Pandit Govind Ballabh Pant be made, put and negatived.

Question, that clause 26, as amended stand part of the Bill, put and agreed to.

CLAUSE 27.

27. No tenant other than a permanent tenure-holder or fixed-rate tenant shall sub-let the whole or any portion of his holding in consideration of a sum of money paid in advance or of a debt or other obligation, whether reserving or not reserving rent to be paid periodically:

Prohibition of leases on payment of an advance.

Provided that nothing in this section shall be held to bar a stipulation that the sub-tenant shall pay (a) to a tenant with a right of occupancy, not more than two years' rent in advance, (b) to any other tenant, not more than one year's rent in advance.

Babu Nemi Saran : I beg to move that the words "except with the landlord's written consent" be added at the beginning of the clause.

As far as the question, or the wider question, of allowing sub-leases in consideration of a sum of money paid in advance is concerned, I would leave it to be discussed in connexion with the amendment of Pandit Govind Ballabh Pant which proposes the omission of the whole clause. I am moving this amendment with the object that in case his amendment is not accepted and the present clause remains in the Bill, then there must be given some latitude to the tenant for sub-letting his holding in consideration of the money received before-hand. The words that I wish to add are "Except with the landlord's written consent." I think the two parties concerned, and who are to be affected by sub-letting, are the landlord and the tenant. If a tenant wants to sub-let his holding and wants to have some money as premium before sub-letting it, then in that case, if he obtains the written consent of the landlord, I do not see any reason why he should not be allowed to do so. So far as the interests of the landlord are concerned, he is the master of his own self and he will be entitled to give or refuse his consent according to his own free will. If a tenant falls into arrears of rent and there is no other way for the tenant in which he can get or borrow money to pay off his creditors, and if there is a sympathetic landlord who in his generosity consents to the fact that he may sublet his holding after receiving a certain sum of money as premium, in order to clear off his arrears of rent, then I do not think there is any reason why this arrangement should not be allowed to be made. Therefore my contention is that when the two parties which are primarily concerned with the land, agree to sub-letting a holding without encroaching upon the rights of one another, why they should not be allowed to do so and if the landlord is willing to give his consent, he should be allowed to do so and the tenant should be allowed to arrange accordingly. I therefore think that in this way one of the stings of this section will be taken out and the tenant would be in a much better position than what he will be if the clause remains what it is at present.

During the course of the above speech the Deputy President took the Chair.

Mr. R. Burn : I gather from the tone of this amendment that the honourable mover is himself opposed to the general practice of giving *sar-i-peshgi* leases, but he thinks that if a provision is made that the landlord's consent be obtained, the objection will be removed. I should

like to read to the Council a short extract from the recent settlement report of the Gorakhpur district. The writer says :—“ Legislation has stepped in to create a class of occupancy tenants and to give them a definite right in the land. Their right is almost complete except that they cannot sell outright. The law limits their right to sub-let and forbids them to mortgage, but in both cases the law is little better than a dead letter and occupancy tenants in this district can mortgage or sub-let on a premium receiving in cash Rs. 50 or Rs. 100 a bigha. That is something less than the sale price of any particular land. It is fair to add that in many instances the landlord receives a portion of the premium in exchange for his signature on the document.” That is to say, admitting that this *zar-i-peshgi* lease system is a bad one, you will in no way check it by allowing it on condition that the zamindar gives his consent because the zamindar will simply, as he did in many instances in the Gorakhpur district, get a share in the premium. You are thus defeating the whole object of the law which prevents the transfer of occupancy holdings.

Babu Nemi Saran : I do not understand how Mr. Burn has taken that I am altogether against the *zar-i-peshgi* leases. I think that to a limited extent and with certain safeguards they should be allowed, and to that extent I moved an amendment to the amendment of Raja Sahib of Tirwa which we had discussed before lunch and in which I wanted that certain facilities should be given to the tenant to sub-let his holding on a *zar-i-peshgi* lease or something like that with the permission of the court, and therefore I think that although I do not like that *zar-i-peshgi* leases should be the order of the day, at least there ought to be certain facilities which should be given to a tenant in order that he may be able to tide over the period of his difficulties. If you go through the whole of this Bill you will find that a tenant has got no loophole by which he can get some money which he may require to pay off the arrears of his rent or for other necessities in connexion with agricultural development, while if you go to the revenue reports you will find that thousands of acres are annually excluded from the holdings for non-payment of arrears of rent. Therefore, I think it is absolutely necessary that some provision should be made in the Bill by which a tenant may be able to borrow money, if he has got no other credit, at least on the credit of his holding when he really wants it for agricultural purposes. Mr. Burn has just shown by reading an extract from a report that a landlord generally shares in the premium which the tenant gets on sub-letting his land. I do believe, and I think every honourable member of this House does believe, that the zamindar is the only person who can best consider his own interests and not the Government or any other person; and when the issue in case of sub-letting is between the zamindar and the tenant, I think both the parties with their eyes open should be allowed to enter into any arrangement which they may think fit on that occasion and no embargo should be placed on their liberty in this respect. The zamindars have been rightly jealous of their right to safeguard their own interests whenever a tenant may endeavour to dispose of his holding against their wishes, but here there is no such case. Here is a case where a landlord with his eyes open and perhaps with a little magnanimity in order to help his tenant wants to allow him to sub-let his holding. I think there is no reason in spite of the quotations of Mr. Burn why he should not be allowed to do so. I therefore think that I should

[Babu Nemi Saran.]

press the amendment not only for the benefit of the tenants, but also for the benefit of the zamindars who are so jealous of their right to act freely without the intervention of any one else.

Hon'ble Sir Sam O'Donnell: I do not think Mr. Nemi Saran has met Mr. Burn's point at all. He argued that the occupancy tenants were owing to their inability to raise money being ejected every year from large areas. I cannot give the Council the exact figures, but I did obtain some time ago figures showing the number of suits from about 1908 onwards, and I think the annual number of suits for ejectment for arrears of rent was between four and five hundred annually. It is idle to say that occupancy tenants will be ejected in large numbers because they cannot enter into these transactions. The real effect of transactions of this kind will be that the occupancy tenant will become a sub-tenant of the mahajan—that is the real effect of it—and the whole policy of the Legislature which is to create a body of cultivating tenants who will have a reasonable measure of protection will thus be defeated. That is why, after a prolonged inquiry, before 1901 it was decided that *zar-i-peshgi* leases should be made voidable. We are going further now and making them void. The extract from the Gorakhpur settlement report which has been just read by Mr. Burn shows that under the existing law on the subject such transactions are entered into.

Babu Nemi Saran : I may inform the Hon'ble the Finance Member that the area of occupancy holdings ejected for non-payment of rent was forty-three thousand (43,000) acres in 1923-24.

Question that the words "except with the landlord's written consent" be inserted put and negatived.

Pandit Govind Ballabh Pant : I move that clause 27 be omitted. Unfortunately this is one of those questions over which there is a very wide divergence of opinion. As I know, the Hon'ble the Finance Member strongly holds that leases of this sort are very detrimental to the interests of the tenants as well as of zamindars. I unfortunately happen to hold the view that it is absolutely necessary that there should not be any restriction of this character in this Bill, so I propose that clause 27 should be omitted. This is one of the proposals that was made in our minute of dissent. The reason why I make this proposal will be stated before the Council in a few sentences. Instead of using my own language I will refer to what was stated by the Hon'ble Mr. Roberts when the Tenancy Bill of 1901 was under discussion. As honourable members may be aware, up to the year 1901 transfers of tenancies were valid. In that year a restriction was imposed by means of which out and out transfers were prohibited. In that connexion the Hon'ble Mr. Roberts observed as follows:—

"Occupancy tenants who are actual tillers of the soil are not men of capital and their agricultural operations are mainly carried out on borrowed money. A great many tenants tide over a bad season by borrowing just as landlords are frequently enabled by their credit with their money-lenders to pay their land revenue punctually. In future this resource is denied to them and ejectment for arrears of rent may be expected to become much

more common. One very important way in which he will suffer and which has rendered the maintenance of his occupancy rights more precarious is the failure of his credit when by misfortune or by the necessity of incurring some family expenditure he finds himself in arrears with his rent."

Sir, in this Bill another provision is being made by virtue of which the landlords will be enabled to seek the ejection of tenants summarily by means of an application presented to the tahsildar, so in this Bill there is further tightening of the provisions relating to ejection and the realization of rent. On the other hand, the one resort to which the tenant can have recourse in case he is embarrassed is being taken away from him. When a tenant is in distress or in an embarrassed position he generally borrows money or realizes what is absolutely necessary to tide over the difficulty by means of a lease for which he receives the premium in advance. I do not use *zar-i-pashgi* leases, because it has been interpreted in different ways. The issue before us is a simple one and it is only this—whether tenants should or should not be permitted to give leases for money received in advance. Under the present Act such leases are valid. Under the Act of 1901 there is no restriction on leases that are given for money received in advance. A further restriction is being imposed by means of the present Bill in the shape of this further prohibition of leases for premium altogether. Then, as would have been noticed by the honourable members, in Oudh since the conferment of statutory rights there has been steady expansion in the area from which tenants have been ejected. There has also been steady increase in the surrender made by the tenants. In this province ejections under section 59 are now comprehending a much larger area than they used to formerly. All these circumstances go to indicate that the tenants do stand in need of some sort of device by means of which they may be able to raise money in order to meet cases of genuine difficulty and hardship. By omitting a provision like this we will be making their position harder. It will be possible for them to pay up their dues in time by means of an arrangement which will not in any way affect the interest of the landlord. I do not see why there should be any objection to it. The only effect of having such a provision in the Bill is this that the tenant will be able to raise money whenever he wants it, but he will have to pay a much higher rate of interest than he will have to pay now. If he is allowed this privilege, then he will have some facility if this clause is omitted from the Bill. In the one case the man who will advance the money will have a security on which he can always rely. In the other case, the necessity being such that the tenant cannot in any way cope with it except by means of a loan, he will have to borrow money at a much higher rate. In this way we will neither be helping the tenant nor the landlord, but only making his position much more embarrassing than it would be if such a provision finds a place in the Bill. I do not think that the present clause of the present Act has caused any difficulty. We have been given instances from Gorakhpur where it is said that they have been able to let their holdings to raise large amounts of money. Well, that does not in any way affect the matter in issue, for it is open to them either to let it or to cultivate it. If they themselves cultivate they would earn their profit instead of earning by sub-letting their holdings. So long as sub-letting is permitted to the extent

[Pandit Govind Ballabh Pant.]

it is permitted. I see no reason why there should be any restriction on the tenant getting any money in order to tide over a bad harvest or in order to meet a genuine and real need. I see the danger of the tenant some time incurring debts for purposes that may not be of a wholesome character, but we cannot get over that circumstance in any way whatsoever. Imprudent people will contract such debts. The point is this whether by having a provision we shall be in any way restricting the growth of agricultural development or promoting agricultural interests or helping the cause of the landlord or of the tenant. As I hold that it will be prejudicial to the interests of those who are connected with land I ask the Council to omit this clause.

Mr. R. Burn : The honourable member has started the advocacy of this change in the Bill by quoting the opinion of the late Mr. D. T. Roberts. I am perfectly willing to admit the great authority of Mr. Roberts' opinion on matters referring to the rural economy of these provinces, but in this particular instance I can say without any fear of contradiction that Mr. Roberts' views were strongly warped by his experience of one district in the province. If honourable members will refer to his very valuable report on the revision of records in the Ballia district they will find that in that district at the time he wrote, somewhere about 40 years ago, it was the common practice for occupancy holdings to be mortgaged and even sold. Mr. Roberts in expressing the opinion which has been quoted by the honourable member for Naini Tal was really reflecting the state of conditions in that corner of the province. The proposal is a striking illustration of what sometimes happens in administrative matters. An evil is found to be growing and a remedy is devised; the remedy to some extent checks the evil, and a future generation comes to look on the remedy itself as an obstruction and an evil. Thirty years ago the evil of sub-letting and mortgaging was found to be increasing very rapidly in these provinces. We have a large volume of correspondence and reports on this matter, and I do not think that there was a single official of any seniority, excepting the late Mr. D. T. Roberts, who was not impressed by the growth of the evil and by the need for some remedy.

I would just like to quote briefly from the remarks made by Sir Leslie Porter who had just returned to the post of district officer after sitting on a Commission of Inquiry into the indebtedness of ryots in the Deccan. Speaking about these questions of mortgage and *zar-i-peshgi* leases he says :—

"Such transfers are not only opposed to the spirit of the law, but are wholly mischievous. The object of the law in creating the legal status of occupancy tenants was to maintain on the soil a body of tenants free from all danger of arbitrary ejection and arbitrary enhancement. The framers of the law knew, however, that the ordinary agriculturist was not a provident person, and if his fate was not to be that of the Deccan ryots, his status must remain inalienable. Their aim was in short not to give the tenant something which he can readily convert into money, but a permanent means of support for himself and his descendants."

He goes on to show that occupancy tenants have not only the boon of fixity of tenure, but they also have the privilege of more effectively securing practically favoured rents. They receive this privilege at the cost of the owners of the land, the landlords and the Government. If they transfer it to third party, that party gets the benefit of the sacrifice made by the landlords and the Government.

Honourable members will notice that in this clause we do allow occupancy tenants to take two years' rent on giving a sub-lease. That should meet most of the hard cases; but the whole object of these restrictions is to avoid what has happened in other parts of India, in the Deccan, and also in the Punjab, where the unlimited right to raise money on holdings has led to the widespread impoverishment and indebtedness of the tenants. If a man becomes so absolutely embarrassed that he is unable to clear himself by ordinary means of credit, it is really best for the whole community that he should be removed from the land and some one who is able to make a better use of it should get it.

Pandit Sri Krishna Dutt Paliwal: The remarks made in the speech of Mr. Burn are most misleading and therefore they cannot be allowed to go unchallenged. He has attempted to challenge the views of Mr. Roberts. But, Sir, I think we need not go so far as to call the aid of Mr. Roberts. One fact is clear and simple, and it is this: The agriculturists throughout the whole world are poor and indebted. This is an admitted fact, and so far as we are concerned in India this is doubly sure. Nobody can deny it. He who runs can read it. This can be found easily in common books of economics relating to the agricultural conditions in the United Provinces. I think, Sir, that even those who are blind and deaf cannot deny that the agriculturists in India are indebted and poor, except perhaps that variety of blind who will not see. This fact being admitted, nobody can deny that the occupancy tenants will have to resort to borrowing frequently, specially when they have to buy bullocks, when they have to buy manure for their fields, when they have to meet the necessities of their families such as at the time of death, births and marriages and so on. They were up till now at the mercy of the usurers. This resource of theirs being taken away from them, they being deprived of this basis of credit for borrowing money, they will be forced to surrender their holdings and rendered liable to ejectment for arrears. The plain fact to my mind is this. This proviso is more dangerous than what my friend Pandit Govind Ballabh Pant has pointed out to be. I think, Sir, that in conformity with his usual sweet reasonableness, he has understated the case. To my mind it is a device to put an end to the class of occupancy tenants. The position is simple. If they cannot borrow money to continue the cultivation of the land, they will have to surrender it as they have been forced to do in Oudh. Furthermore, if they are not able to realize money as they will not be able to, they are liable to be ejected for arrears as is being done in Oudh. This being so, Sir, I hope the House will not allow resorts to such subterfuges. If the House agrees to put an end to this class of tenants, let them say so openly like honest men. If not, why resort to such devices?

Mr. H. A. Lane: The honourable member for Naini Tal thinks that the avoidance of *zar-i-peshgi* will be another nail in the coffin of the occupancy tenant, and that if he is not allowed to contract such

[Mr. H. A. Lane.]

leases his credit will be gone. Well, Sir, is this a true picture of the occupancy tenants? I know occupancy tenants fairly intimately, having worked for the last nine years at settlement and having spent a good part of each year among the tenants, and I do not think that this is at all a correct picture of the condition of the occupancy tenants.

Turning to the western districts of the province, what do we find the condition of the occupancy tenant to be? Is his credit so poor that he must depend on *zar-i-peshgi* for raising money? The occupancy tenant in the Meerut division, in Muttra and certainly in the whole of the upper and a good part of the lower doab is holding his land at a rent which is only about half the competition rent paid by non-occupancy tenants. He has security in the land. The result is that as a general rule he reaches a high standard of cultivation. He is not afraid of ejection. He puts a good deal of capital into his land and he produces good results agriculturally. The result is that the ordinary occupancy tenant has little difficulty in building up a certain amount of reserve for himself in the matter of resources. If a bad season comes, he generally falls back on his own resources. If they become exhausted, he has no difficulty whatever in securing a loan from the mahajan at a fairly reasonable rate on his own personal security and the security of his own stock. The occupancy tenant whose credit is so poor that he must depend on the *zar-i-peshgi* lease in order to raise money is a bad tenant. The average tenant is able to build up for himself a sufficient reserve to meet bad seasons, and if he is unable to do so, he is a tenant who will lose his land anyhow. A tenant of that sort is not one who ought to be protected from ejection when he gets into difficulties, and it is much better if he makes way for a better successor. The picture of an occupancy tenant as a person who just manages to hold on to his holding with great difficulty and must have resort to the device of *zar-i-peshgi* leases to enable him to raise a loan is not true of the occupancy tenant as I know him.

Babu Sangam Lal: The policy so far followed by the Government has been to save an improvident zamindar as well as an improvident tenant against himself, but in this Bill they have made a departure in favour of the zamindar, thus admitting that there are occasions when he really needs the money and some consideration must therefore be shown to him. Under Act II of 1901 if a proprietor transfers his holding in lieu of consideration, he acquires an ex-proprietary right in his *sir* and *khud-kasht*, and any arrangement to the contrary is void. Now, under clause 15 of the Bill the zamindar is empowered, subject to certain conditions, to relinquish the ex-proprietary rights in favour of the purchaser, whether an outsider or a non-agriculturist, for the simple reason that there are occasions when small plot proprietors cannot get adequate consideration for the transfer of their proprietary rights. If the proprietor agrees to relinquish the ex-proprietary rights, he gets about 20 per cent. more than what he does, if he retains his right as an ex-proprietary tenant. So, subject to the permission of the court, he has been given the right to relinquish even his ex-proprietary right. But so far as the small plot proprietors are concerned, and they abound mostly in the Gorakhpur district, they have been permitted to mortgage their holdings for ten years with possession, that is to say, they can even transfer the actual possession of the plot to the mortgagee for ten

years, which I regard as a fair concession. When, therefore, such a concession has been made in favour of the small plot proprietors, whose condition is in no way better than that of many occupancy or ex-proprietary tenants, I see no reason why it should not be extended to the latter. It may be urged that the former are proprietors and not tenants, but the transaction involves a transfer of ex-proprietary rights. There is absolutely no difference in principle in the two cases, because the object of both is to secure to the improvident person at least the ex-proprietary rights in his *sir* and *khudkasht*. If you delete the clause, what will be the effect of it? At present an occupancy or ex-proprietary tenant can sub-let his holding for five years, but if the clause is deleted, instead of receiving rent every year, he can get rent for five years in a lump sum. The difference in the period may be vital to the tenant. For instance, if he wishes to purchase a bullock or such other thing, two years' rent may not be sufficient for the purpose. Therefore, I think that it is but right that no further restrictions be imposed on the occupancy or ex-proprietary tenants, and with these words I support the amendment of Pandit Govind Ballabh Pant.

Khan Bahadur Maulvi Fasih-ud-din : Hitherto there has been a tug-of-war between the swarajists and the officials, and I want to break the monotony by saying a few words on the subject. I think it must be admitted on all hands that the scheme of sub-leases is not to be encouraged in the interests of the tenant himself, and for that reason the scheme of *zar-i-peshgi* leases is all the more to be condemned. I know, Sir, that in a large number of villages the system of *zar-i-peshgi* leases has practically ruined the tenants. There is a village of mine which we purchased about five years ago. I happened to visit that village only a couple of weeks ago and I found that about 50 per cent. tenants were in the clutches of money-lenders through *zar-i-peshgi* leases. I was rather astonished at this, and I made inquiries into individual cases. I found that one man who had originally borrowed Rs. 50 on the basis of a *zar-i-peshgi* lease could not pay his rent to the zamindar regularly and had to borrow and borrow every year and his debts had accumulated to Rs. 200. This man was paying a rent of Rs. 20. I asked him if he ever hoped to pay the amount of Rs. 200. He said that he never hoped to be able to do so. I found that he was actually living by begging and the land was in the cultivation of his mahajan. There were many cases of that kind. The fact of the matter is that an Indian cultivator, as we all know, is thriftless and improvident. Whenever he gets money he spends it like water without considering the fact that he has to provide himself against calamities and other necessities. For that reason he is constantly in need of money and he is apt to borrow money at an exorbitant rate of interest. This is a fact which we cannot overlook. We must call a spade a spade, and every one of us will have to admit that it is so easy for a money-lender to dictate his terms to an Indian cultivator who constantly stands in need of money. If we therefore put an embargo on *zar-i-peshgi* leases, this would be a boon and a blessing to the Indian cultivator.

As to the objection which has been raised by the leader of the Swaraj party that if we do not allow the tenant to borrow money on *zar-i-peshgi* leases his ejection will be facilitated, especially in view of the clause that we are putting in this Bill about the ejection of

[Khan Bahadur Maulvi Fasih-ud-din.]

tenants on the basis of a notice. I should like to point out that in that very clause a very good safeguard has been entered that the tahildar can allow the tenant time to the extent of six months; in other words, he can allow him to keep on his land till the advent of the next crop. I think that is a sufficient safeguard and no one should fear that because a tenant cannot pay his arrears he will be ejected at once. The argument which has been advanced by my honourable friend therefore falls to the ground. It is in the interest of the tenant himself that this prohibition about *zar-i-peshgi* leases has been put in, and I think we will not be doing a good turn to the tenants if we abolish this clause altogether. I sincerely and firmly believe that this clause is a very good safeguard against tenants becoming thriftless and borrowing money freely. A Land Alienation Bill has been introduced in the Punjab in order to prevent the landlords from borrowing money freely. It has been introduced in a part of these provinces, and the other day we, the representatives of the landlords in the Council, brought up a resolution for introducing such a Bill even in the Agra province. It is on the same principle that we are opposing this scheme of *zar-i-peshgi* leases.

Rai Jagdish Prasad Sahib : I feel inclined to give my support to the motion moved by Pandit Govind Ballabh Pant. I admit that sub-letting is an evil and ought not to be encouraged. I also admit that the system of *zar-i-peshgi* leases is equally an evil and ought not to be encouraged. But, Sir, we must admit that tenants need money. I know that the tenants like that they should be allowed to enter into *zar-i-peshgi* leases. Knowing that it is so, I think that we should not stand in their way if they enter into such contracts. After all, they can best know their own interests, and if they consider that in their own interests *zar-i-peshgi* leases are an evil, they would not enter into them. But if they think that it is necessary to enter into such contracts, we as zamindars should not stand in their way. It is the tenants themselves who can realize whether they would be better off with or without *zar-i-peshgi* leases. With these words I support the omission of clause 27.

Khan Bahadur Hafiz Hidayat Hussain : But for the last speech I would not have taken part in this debate. I think that the effect of *zar-i-peshgi* leases is not fully understood. A *zar-i-peshgi* lease is nothing less than a mortgage. If you allow a mortgage of the holding, you go against the very provisions of this Bill. The great evil of the introduction of leases being granted freely seem to me to let in the money-lender. What happened in the Central Provinces might be repeated in these provinces. Before the present Act was passed in the Central Provinces, the tenants were allowed to mortgage their holdings; the result was that holdings were constantly sold. The Legislature in the Central Provinces had to resort to provisions similar to those contained in Act II of 1901. If *zar-i-peshgi* leases are allowed, the result will be that five years' rent would be taken by the lessee in advance, a mortgage will be effected and the landlord will let his rent fall in arrears, and when the three years' rent has accumulated, he will eject the tenant. Therefore it would not be so much in the interests of the zamindars as in the interests of the tenants themselves if *zar-i-peshgi* leases are not allowed.

Pandit Nanak Chand : I rise to support the amendment of my friend Pandit Govind Ballabh Pant. I need not say more on this subject, but I think that the tenants who are classed as improvident are prudent enough to look after their own interests. They are anxious to have the right of entering into *zar-i-peshgi* leases, and as has already been pointed out, they do enter into such contracts to raise money. A tenant, who is hard-pressed either on account of the accumulation of arrears of rent or on account of his debts which he has taken from a money-lender, has got no other security to raise money except that of his holding. The effect of an ordinary lease or a *zar-i-peshgi* lease is that that tenant remains out of cultivation for that period which is allowed to him for sub-letting and another person cultivates his land for that period. If the Legislature on the one hand purports to stiffen the conditions regarding ejectment and on the other hand tightens his power of sub-letting, and in addition imposes this condition, that though he may be entitled to sub-let he will not be entitled to get rent in advance, it is imposing a double hardship. Sometimes a tenant wants to sub-let only a part of his holding on a *zar-i-peshgi* lease, because he wants either to replace his agricultural cattle which he has lost during the outbreak of an epidemic or he wants to sink a well in his holding. But he has not got ready money, and if he were to go out in the market he will get money at a very high rate of interest. It is to his advantage that he should be permitted to sub-let a portion or whole of his holding for as long a period for which he is entitled to sub-let his holding to meet cases of genuine hardship or emergency.

For these reasons I support the motion.

Khan Bahadur Shaikh Masud-uz-Zaman : In connexion with the debate earlier in the day I have already submitted that *zar-i-peshgi* lease, in my opinion, is nothing less than mortgage with possession. Now, how far is it desirable that *zar-i-peshgi* leases with possession be allowed to a tenant? Our earnest desire is, and it has been our principle, that we must encourage the cultivation by the tenant himself as far as possible. Is it desirable that the tenant should become something like a zamindar himself? If he is allowed to give his land on mortgage with possession, it will mean that he will practically give up his own cultivation. Besides that, the zamindar has neither the control of such a tenant, nor does he help towards the general improvement of the village cultivation. If it is intended that his difficulties regarding loan is to be overcome, I think the best thing is that the more we encourage co-operative societies, the better. I think co-operative societies have no other object but to help the agriculturists in getting loans on easy rates of interest for purposes necessary for the cultivation, for instance, for purchasing bullock or for seed. The more we restrict the rights of our tenants in the matter of borrowing or mortgaging his lease, the more we are forcing him to borrow at cheap rates of interest from co-operative societies. I have known instances where through the efforts of the public men individual borrowing has ceased in several villages, with the result that co-operative societies have taken the place of money-lenders, and those co-operative societies are flourishing in a successful manner. Besides that, the tenant will never be contented. I speak from personal experience, of those parts where the tenant is generally poor, that he will never cease borrowing so long as he can get it, no matter whether it may be for spending a large sum of money on marriage or doing something extravagant. This thing has

[Khan Bahadur Shaikh Masud-uz-Zaman.]

to be seriously discouraged. This clause, to keep restriction on tenant's borrowing, is very necessary in the interests of general improvement of agriculture.

For these reasons I oppose the amendment.

Pandit Govind Ballabh Pant : Sometimes we are apt to forget the state of things which surrounds us and it seems to me curious indeed that honourable members sitting in this House should seriously assert that the Indian tenant is swimming in milk and honey. So far as I have been able to understand his case, is one absolutely deplorable, and the latest authority on the subject, which I know cannot be repudiated by the Government benches, can be found in the 1926 book of Sir Valentine Chirol. I leave it at that. If there is anything which is immensely galling, which causes agony to an Indian, it is the painful, the miserable the unimaginably wretched condition of the man who tills the soil. If he were really rich, if he were really well-to-do, I could then have very well understood every embargo being put on every means by which he could raise money. But knowing as I do, that but for certain exceptions in certain parts, generally his condition is nothing but pitiable. I feel that we will be indirectly bringing his day of ruin nearer if we deprive him of any facility which can help him to raise money at a cheap rate, and it is because I feel that the restriction that is being imposed by this Bill will prevent him from raising money at a cheap rate that I am opposed to it. I have absolutely no doubt that when a man stands in need of money he will raise it. Well, I do not see how my honourable friends can prevent him from borrowing money by means of bonds, sub-letting the land, and asking the man who lent the money to set off his annual dues out of the rent that he will have to pay. The only difference will be that, as the thing will be done by means of a subterfuge, he will have to pay more than if it were done in a straightforward manner. If there be nothing illegal about it, he will be able to command the actual rates of the market and will have the benefit of it. That seems to me to be the only effect of this provision. We are driving him out of the market by imposing an artificial restriction which it will be easy for the parties to override but which will be to the detriment of the tenant to defeat because of this provision.

I accept the authority of Mr. Burn as much as I do that of Mr. Robert : to me both of them stand in the same boat ; they swim or sink together. So difference between them do not matter much to me, but I think that Mr. Burn is today introducing a dangerous precedent for himself, for his successor may come and disown him and if that catastrophe happens, he will have to thank himself for it. As to the authority of Mr. Lane, his experience has been confined to the Muttra district and I am prepared to accept that that tract is such that it can tickle the jealousy of a jealous man, and it is one of the weaknesses of the Government which has often been noticed that so long as a man is weak or poor he has their patronage, but the moment he is able to assert himself or to stand on his legs, he provokes their envy. Well, the same thing has been illustrated by Mr. Lane. It is on a par with the every-day experience of many of us, not excluding some of the honourable members sitting on the cross benches there. I am not

asking the honourable members of this House to make an innovation; I am asking them to keep intact the present clauses of the present Act. If I had been asking for an innovation, it would have been open to them to argue that it will prove disastrous; but not a single argument has been advanced to prove that the present clause in the present Act has proved disastrous so far. My friend Hafiz Hidayat Husain had to roam into the jungles of the Central Provinces in order to discover something there. Well, the state of things there may be different from what it is out here. We know that in spite of the fact that such a provision has been in the Act for the last twenty-five years, the tenants or the landlords are not much the worse because of its existence in our province. My friend Maulvi Fasib-ud-din says they are. Well, I am not prepared to be cowed down by his refutation as I can see them better for myself, and from what I have seen of them, I find that while in his own village he says that as many as 50 per cent. were in debt, in other villages as many as 90 or 95 per cent. were in debt. I hardly come across any tenant in any village who is not in debt. The extent or the degree of indebtedness may differ, but there is hardly any tenant who is free from debt, and this is one of the serious complaints that we have against the present system of administration; that the poor cultivating ryot has not got any room to expand and he has not got any resources to develop himself, his holding, agriculture, or his family and those who depend upon him, and so long as you do not improve his condition I think it is morally improper to impose this restriction on him, which will shut out even the means to which he can have a recourse in moments of distress. I do not think I need labour the point further. I hope honourable members will agree with me in the view that this clause will prove detrimental to all concerned and should be omitted.

Hon'ble Sir Sam O'Donnell: The only argument that has been advanced in support of this amendment is that it will enable the tenant to raise money for legitimate purposes in times of need at a cheaper rate. Our answer to that is that these *zar-i-peshgi* leases will not have that result. That is not the true nature of these transactions. The real nature of these transactions was clearly stated in the discussion on the 1901 Bill by the then Chief Secretary, Mr. Miller. This is what he said:—

“A tenant finds himself involved in debt to his banker; he leases his occupancy lands to the banker in consideration of the sum said to have been advanced to him, that sum being the amount of the debt or something more. The tenant agrees that the banker, his sub-lessee, may further sub-let land to whomsoever he likes, but that he shall pay the occupancy rent regularly to the landlord. Further, the tenant stipulates that neither he nor his heirs shall ever relinquish the holding or agree to any enhancement of the rent. The result of such a transaction is that the tenant is entirely dissociated from the holding for the future, unless, indeed, he takes it back as a sub-tenant of his own sub-lessee. If the original tenant has no heirs, the occupancy right is extinguished at his death, and the landlord can then eject the banker. But, if the occupancy tenant has heirs, the right then devolves as if it were land, and the sub-lessee may continue in possession for generations, so long as there is a direct heir of the original tenant, whether that heir resides in the village or out.

“Members of Council are also, no doubt, aware of the practice by which an occupancy tenant who is in debt lease, his holding to his creditor—in villages such leasing is spoken of as mortgaging—and then takes back the holding at a rent very much higher than that which he is obliged to pay to the landlord. The tenant's position is the same as if he had to pay a large enhancement of rent; but the enhancement goes not to the landlord, but to some outside money-lender.

"It was never the intention of the legislature to create a class of middlemen like the bankers referred to who do not cultivate the land themselves, and who, while paying only a fair rent, exact a rack-rent from the actual cultivator. The fixity of tenure sanctioned by the law becomes a more instrument for the transfer to the money-lender of a valuable interest in the land. The landlord loses, and the tenant does not gain."

That is the real significance of these transactions and that is why the Act of 1901 made them voidable. The provisions of the Act of 1901 have not been a dead-letter. They have prevented a great deal of mortgaging which might otherwise have taken place. They have not, however, been completely effective as Mr. Burn has shown by reference to the settlement report of the Gorakhpur district, and for that reason we propose to go one step further and make such transactions void. I think the honourable member for Naini Tal said that a tenant could evade this provision. It is very difficult to frame any legislative enactment which cannot be evaded to some extent by people sufficiently subtle and cunning. A tenant might execute a bond in favour of the money-lender if the money-lender were willing to advance the money, but the money-lender will know that at any rate he cannot eject the tenant from his holding, and therefore it is very doubtful whether in fact the money-lender would be as ready to advance the money as he would be if he could get possession of the holding through *zar-i-peshgi* leases. I think the honourable member for Naini Tal said that Mr. Lane's experience was confined to the Muttra district. As a matter of fact Mr. Lane's experience has been very much wider than that. It extends to a number of districts in the western parts of the province. Mr. Burn has had a long experience and I myself to a less extent have had experience of eastern districts. Further, the decision to make these leases voidable was arrived at after a most exhaustive inquiry spread over several years and opinion was almost unanimous, with the exception of Mr. D. T. Roberts, that these leases were an unmitigated evil. It is quite true that the Indian tenant is very often in debt. He is not altogether exceptional in that respect. If honourable members will examine the reports regarding small tenants or small peasant proprietors in all parts of the world, even in America where the farms are much larger than they are here, they will find that everywhere the agriculturist is in debt. Of course, that is very deplorable, but in this province at any rate the solution will not be found by encouraging transactions of this kind. It will be found in measures for giving greater security of tenure and developing the co-operative movement. That is the real solution and not transactions which may undoubtedly have the result of causing the land to pass into the hands of the money-lender.

Question put, that clause 27 stand part of the Bill.

The House divided: Ayes 61, Noes 24.

Ayes.

Hon'ble Sir Sam O'Donnell.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.

Hon'ble Rai Rajeshwar Bali.

Hon'ble Thakur Rajendra Singh.

Hon'ble Nawab Muhammad Yusuf.

Mr. G. B. Lambert.

Mr. E. A. H. Blunt.

Kunwar Jagdish Prasad.

Sir Ivo Elliott.

Mr. P. H. Tillard.

Mr. H. A. Lane.

Mr. R. L. Yorke.

Mr. R. Burn.

Mr. A. W. Pim.

Mr. E. J. K. Hallows.

Mr. E. L. Norton.

Mr. H. G. Sillan.

Mr. R. J. S. Dodd.

Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenroder.
 Raja Muhammad Elias Rasul Khan.
 Raja Bahadur Brij Narayan Rai.
 Mr. H. David,
 Babu Khem Chand.
 Lala Kishan Lal.
 Chaudhri Jaswant Singh.
 Rai Sahib Chaudhri Sheoraj Singh
 Thakur Rajkumar Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Raja Suryapal Singh.
 Lala Dhakan Lal
 Rao Sahib Kunwar Sardar Singh.
 Raja Narayan Pratap Singh.
 Rai Bahadur Pandit Balbhadra Prasad
 Tiwari.
 Raja Sri Krishna Dutt Dube.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 2nd Lieut. Sahibzada Ravi Pratap Narayan
 Singh, Rai Bahadur.

Raja Indrajit Pratap Bahadur Sahi.
 Raja Shankar Sahai,
 Kunwar Surendra Pratap Sahi.
 Rao Sahib Abdul Hameed Khan.
 Maulvi Shahab-ud-din.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Maulvi Muhammad Obaid-ur Rahman Khan,
 Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Shaikh Masud-uz-Zaman.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq
 Husain
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Mr. Ashiq Husain Mirza.
 Khan Bahadur Munshi Siddiq Ahmad.
 Khan Bahadur Chaudhri Muhammad
 Rashid-ud din Ashraf.
 Shauikh Abdus Samad Ansari.
 Raja Shambhu Dayal.
 Lieut. Raja Shauikh Imtiaz Rasul Khan.
 Raja Jagannath Bakhs Singh.

Noes

Babu Narayan Prasad Arora.
 Babu Sangam Lal.
 Babu Mohan Lal Saksena.
 Babu Damodar Das.
 Babu Bhagwati Sahai Bedar.
 Thakur Manjit Singh Rathor.
 Rai Jagdish Prasad Sahib.
 Pandit Nanak Chand.
 Lala Babu Lal.
 Thakur Shiva Narayan Singh,
 Babu Nemi Saran.
 Thakur Sadho Singh.

| Pandit Brijnandan Prasad Misra.
 Pandit Jhanni Lal Pando.
 Pandit Sri Krishna Dutt Paliwal.
 Babu Parsidh Narayan Anad.
 Pandit Yajna Narayan Upadhya.
 Bhaya Hanumat Prasad Singh.
 Pandit Govind Ballabh Pant.
 Pandit Har Govind Pant.
 Mr. Mukand Lal.
 Babu Ram Chandra Sinha.
 Dr. Jaikaran Nath Misra.
 Maulvi Zahur-ud-din.

CLAUSE 28.

The Deputy President proceeded to clause 28. Raja Shambhu Dayal requested the Deputy President to adjourn the Council as it was too late.

Hon'ble Sir Sam O'Donnell: We are making very slow progress and a good deal of time is being spent on points of relatively minor importance. If the Council would concentrate on matters of substantial importance only, I think there would be much rapid progress.

The Deputy President: I am waiting for the Hon'ble the President to return and to decide whether the Council should adjourn now or not.

Question, that clause 28 stand part of the Bill, put and agreed to.

Hon'ble the President resumed the Chair.

CLAUSE 29.

29. (1) No ex-proprietary or occupancy tenant shall, except with the written consent of the landholder, sub-let the whole or any portion of his holding for a term exceeding five years or within five years of any portion of such holding being held by a sub-tenant.

Sub-leases by ex-proprietary, occupancy, statutory, and non-occupancy tenants, and by heirs of statutory tenants.

(2) A statutory tenant shall not, except with the written consent of the landholder, sub-let the whole or any portion of his holding for a term exceeding three years or within three years of any portion of such holding being held by a sub-tenant.

(3) The heir of a statutory tenant shall have the same right to sub-let as a statutory tenant :

Provided that the period of a sub-lease given by an heir of a statutory tenant shall not extend beyond the termination of the period for which such heir is entitled to hold as tenant.

(4) A sub-lease for a term exceeding one year, or from year to year, *shall be made by registered instrument only.*

(5) No non-occupancy tenant shall, except with the written consent of the landholder, sub-let the whole or any portion of his holding for a term exceeding one year or within a year of any portion of such holding being held by a sub-tenant.

(6) A female, a minor, a lunatic, an idiot, a person incapable by reason of blindness of practising agriculture, or a person in the military service of Government otherwise than as a reservist shall not be subject to the restrictions laid down in sub-sections (1), (2), and (5) :

Provided that this sub-section shall not apply in the case of a joint tenancy unless all the joint tenants are of one or more of the descriptions specified.

(7) A sub-lease which would be invalid but for the provisions of sub-section (6) shall not remain in force for more than five years after the lessor either dies or ceases to come within any of the descriptions given therein.

Pandit Govind Ballabh Pant : I move that the words " within two years " be substituted for " within five years " in clause (1). The clause as amended will run thus :—

" No ex-proprietary or occupancy tenant shall, except with the written consent of the landholder, sublet the whole or any portion of his holding for a term exceeding five years or within two years of any portion of such holding being held by a sub-tenant."

I will not reiterate many of the arguments that I had the privilege of advancing for the consideration of the honourable members of this House when I moved the previous amendment. I feel that by this provision we are doing a serious injustice to the occupancy class of tenants. Under the present Act of 1901, it is open to an occupancy tenant to sub-let his holding for five years and thereafter again after the expiry of two years. In place of that this Bill provides that he will not be allowed to sub-let any portion of his holding until five years have expired since the last tenancy came to an end by means of which he sub-let any part of his holding to a sub-tenant. That seems to me to be highly unfair. I am entitled to say that in this Bill the occupancy

tenant is not getting a single privilege ; liabilities are being imposed upon him ; his liberty is being curtailed and his privileges are being taken away from him. The issue in this Bill is directly between the landholders on the one hand and the non-occupancy tenants on the other. I see absolutely no reason why the occupancy tenancy should be prejudiced by any provision embodied in this Bill. Besides, this provision will cause an amount of hardship and difficulty to them. I may also remind the honourable members of this House that the Rule 13 Committee of 1910, in which, as I said a few minutes before, the zamindars were represented very fairly and very fully did not make any recommendation of this character. I may again remind the honourable members of this House that the Board of Revenue Bill of 1918 did not make any proposal of this character. It has emanated only recently, and I feel that we are going against the weight of authority, we are going against the unanimous opinion of substantial landlords of a respectable type in this province by introducing a provision of this character. Then I am not in any way widening the scope of the provision in the present Act. I am only trying to adjust the clause in the Bill to the terms of the present Act, and I see no reason why any departure should be made from it. I shall not labour the point further. I hope the honourable members of this House will have the fairness to let the occupancy tenant occupy the position which he is occupying today.

Rai Bahadur Thakur Hanuman Singh : A similar motion stands in my name too. I support the amendment which has been moved by my friend Pandit Govind Ballabh Pant. There appears to be no reason why the power of sub-letting in the case of occupancy tenants should be curtailed when they have been enjoying that power since the enforcement of Act II of 1901. We have been listening to the debate on section 27 which has now become part of the Bill. If this privilege of sub-letting in case of occupancy tenancy will be curtailed, I think that occupancy tenants will be hard hit. It can be said, Sir, that no tenant whose livelihood depends upon cultivation sub-lets his land unless and until he is forced to do so under circumstances which are beyond his control. I think it will not be asking too much of the landlord members of this House to agree to the amendment which has been so ably moved by my friend Pandit Govind Ballabh Pant.

Khan Bahadur Mr. Muhammad Ismail : I think that if you pass this amendment it will be really receding from what you have decided before. It has been an accepted principle that the tiller of the soil ought to stick to his holding, and as far as possible his rights of sub-letting must be limited. The present Bill permits a tenant without consent, written or otherwise, of the zamindar to sub-let the land for five years and after that there is an interval of five years. This is a very proper limit otherwise you will find that the occupancy tenant is really not cultivating the land himself, but rack-renting it to somebody else. In that case the person who is actually cultivating the land should have the right of life-tenancy and not the occupancy tenant. The occupancy tenant will be very much in the position of a zamindar. Therefore I oppose this amendment of the honourable member for Naini Tal.

Hon'ble Sir Sam O'Donnell : I shall endeavour to be as brief as possible. We are agreed that tenants must have some right of sub-letting their land. They may for legitimate reasons be compelled to do so. On the other hand, we are all agreed that there must be some restrictions

[Hon'ble Sir Sam O'Donnell.]

on sub-letting. The only question is—what shall be the nature of those restrictions? Under the present Act an occupancy tenant can sub-let for five years, and after that there must be an interval of two years. If we go back to the history of 1901 Act we shall find that the main reason why an interval of two years was fixed was to stop *zar-i-peshgi* leases. It would have been useless to lay down simply that a lease might not be given for more than five years if at the end of five years another lease could be given for another five years. It was essential that an interval should be prescribed and at the time it was considered that an interval of two years would suffice. Since then we have had experience of the working of that Act, and although the restrictions imposed in 1901 have stopped a great deal of sub-letting, there is no doubt that a good deal of sub-letting and continuous sub-letting does go on. I went into the figures some years ago. As far as I could make out about 20 per cent of the occupancy area is sub-let. I do not say that all of that is continuously sub-let, but I think there is good reason to believe that a great deal is so sub-let. For example, in the Etawah settlement report it is stated that 18 per cent. of the occupancy area is sub-let and continuously sub-let. Therefore I think we have good ground for going further than we went in the Act of 1901. Under the Bill an occupancy tenant can sub-let for ten years out of 20 years. And if he cannot cultivate his land for ten years out of 20 years, it is probably better that he should give it up. As has been pointed out again and again the object of the Legislature has been to create a class of *cultivating* tenants who will have reasonable protection against ejection and arbitrary enhancement of rent. The object of the Legislature has not been to create a class of middlemen, prosperous or otherwise; continuous sub-letting will undoubtedly defeat the object of the Bill and is opposed to the policy of all the Acts that have been passed in these provinces.

Pandit Govind Ballabh Pant: The Hon'ble the Finance Member has said that when an occupancy tenant can sub-let for ten out of 20 years he must feel satisfied with his lot. I have only to remind him that under the scheme of this Bill a statutory tenant can sub-let for ten out of 20 years and a non-occupancy tenant can sub-let for ten out of 20 years. I do not know what regard the Hon'ble the Finance Member has paid to the occupancy tenant's superior right and status in that he has eliminated all distinctions between him and non-occupancy and statutory tenants. We have been labouring under the delusion that occupancy tenants hold a status superior to that of statutory tenants or to that of non-occupancy tenants. If all of them are to be brought down to the same level, that should be frankly stated, and then we will not ask for any distinction between occupancy tenants, statutory tenants, and non-occupancy tenants. But so long as that distinction is maintained naturally we are entitled to argue that if an occupancy tenant has a superior status, a status which he has acquired out of 70 years' statutory rights, then it is very improper to deprive him of those rights which he has enjoyed for such a long time and to which he is entitled by prescription and by statute.

As to the experience that has been gained of the working of this Act, I do not know when light dawned on the Government, because, as I said at the outset, in 1910 they appointed a committee and that committee went through the whole Bill and made inquiries and issued a

report after five years in 1915; and they held that this clause should remain intact. After that Mr. Hopkins made an inquiry for about three years in the province, and in 1919 the Board of Revenue issued a Bill, and they again kept this clause intact. But one fine morning light may have dawned on Government and they may have acquired new knowledge! But so far as their inquiries and the inquiries of those who are in a position to find out facts are concerned, they were satisfied that the present clause in the existing Act was of a wholesome character and should be maintained. In these circumstances I cannot be persuaded to accept the contention that it is experience which has led them to change their view. There may be other reasons — they may be good, or they may be bad; but it is anything but experience.

Then, Sir, I agree with the view that the tiller of the soil should have every sort of security. At the same time I agree with the view that rack-renting should be prevented. But so long as other provisions find place in the Bill which tend to extend the area over which landholders have unlimited and absolute liberty and the tenant has no security at all, such a plea cannot look consistent or straight. It seems to be inconsistent, though the inconsistency may not be patent to those who do not like to see it. In all these circumstances I remain still of the view, strongly of the view, that by this clause a serious inroad is being made on the rights of occupancy tenants. It is surely improper that those rights should be taken away from them. Of course he can be helped in various other ways! But we see that no such help is being extended to him. Under the scheme of the Bill you can eject him from his holding by a mere application. If the roster system finds a place in the Bill, you can enhance the rent without any difficulty. On the other hand, you are reducing his privileges in the matter of sub-letting. Is it fair? It is wrong to say that if the period is enlarged from two to five years, then the evil of sub-letting, in case it is an evil, will go on. The only effect of that provision will be this: that a tenant who has no heart on his holding will keep it on to all appearances so that he may seem to be cultivating it for three years when he does not really want to do so. In that case the yield of the land will be inadequate and the benefit that would accrue from it would be much less than it would be if it were given to a man who is prepared to work heartily. Thus it will not help anybody.

Hon'ble Sir Sam O'Donnell: The honourable member for Naini Tal has said that we have completely assimilated the position of the occupancy tenants to that of the statutory tenants. So far as sub-letting goes, there is a clear difference. The occupancy tenant can sub-let his land for five years, the statutory tenant for three years and the non-occupancy tenant can sub-let only for one year. That seems to be a substantial difference.

Pandit Nanak Chand: After an interval of five years.

Hon'ble Sir Sam O'Donnell: Then, Sir, the honourable member asked when did we come to discover that restrictions are necessary on sub-letting. I can only say that I went into the whole question three years ago. I did not arrive at any final conclusions on the point. But the reports which I examined and the figures which I obtained did undoubtedly raise grave doubts in my mind whether the existing restric-

[Hon'ble Sir Sam O'Donnell.]

tions on sub-letting were adequate. When therefore the committee of 1924 definitely recommended that these restrictions should be made I had no difficulty in accepting their proposal. I do not intend of course to refer to the other points to which the honourable member referred, such as the enhancement of rent and the roster year system. We shall have an opportunity of examining them later when we come to them. But I will only say that I anticipate no difficulty whatever in saying that the application of the roster year system will be eminently fair and will not do any injury whatever to the genuine cultivating occupancy tenant.

Question put, that the words "five years" stand part of the Bill.

The House divided: Ayes, 57; Noes, 23.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. J. ano
Mr. R. L. Yorke.
Mr. R. Eurn.
Mr. A. W. Pim.
Mr. B. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchouder.
Raja Bahadur Brij Narayan Rai.
Lala Kishan Lal.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.

Raja Suryapal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Raja Shankar Sahai.
Ranwar Surondra Pratap Sahi.
Rao Sahib Abdul Hameed Khan.
Maulvi Shahab-ud-din.
Khan Bahadur Ohaudhri Amir Hasan Khan
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-ur-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur, Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Faeth-ud-din.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Husain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Shaikh Abbas Samad Ansari.
Raja Shambhu Dayal.

Noes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksona.
Babu Damodar Das.
Babu Bhagwati Sahai B. dar.
Thakur Manjit Singh Rathor.
Pandit Narak Chand.
Lala Babu Lal.
Thakur Shiva Narayan Singh.
Babu Nemi Suran.
Thakur Sadho Singh
Pandit Brijmoudan Prasad Misra.

Pandit Jhanui Lal Pando.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsich Narayan Anad.
Pandit Yajna Narayan Upadhyaya.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukand Lal.
Babu Ram Chandra Sinha.
Dr. Jalkaran Nath Misra.
Maulvi Zahur-ud-din.

The Council was then adjourned to the following day.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Thursday, July 8, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m. Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(97)

- | | |
|---|--|
| Hon'ble Sir Sam O'Donnell. | Lieut. Raja Durga Narayan Singh. |
| Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan. | Raja Narayan Pratap Singh. |
| Hon'ble Rai Rajeshwar Ball. | Rai Bahadur Pandit Balbhadra Prasad Tiwari. |
| Hon'ble Thakur Rajendra Singh. | Pandit Sri Krishna Dutt Paliwal. |
| Hon'ble Nawab Muhammad Yusuf. | Babu Parsidh Narayan Anad. |
| Mr. G. B. Lambert. | Pandit Yajna Narayan Upadhyaya. |
| Mr. E. A. H. Blunt. | Raja Sri Krishna Dutt Dubo. |
| Kunwar Jagdish Prasad. | Rai Sahib Babu Dip Narayan Roy. |
| Sir Ivo Elliott. | Rai Bahadur Thakur Hanuman Singh. |
| Mr. P. H. Tillard. | 2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur. |
| Mr. H. A. Laue. | Raja Indrajit Pratap Bahadur Sahi. |
| Mr. R. L. Yorke. | Bhaya Hanumat Prasad Singh. |
| Mr. R. Burn. | Pandit Govind Ballabh Pant. |
| Mr. A. W. Pim. | Mr. Mukandi Lal. |
| Mr. B. J. K. Hallows. | Babu Ram Chandra Sinha. |
| Mr. E. L. Norton. | Raja Shankar Sahai. |
| Mr. H. G. Billson. | Dr. Jaikaran Nath Misra. |
| Mr. K. J. S. Dodd. | Rai Bahadur Thakur Mashai Singh. |
| Colonel A. W. R. Cochrane. | Kunwar Surendra Pratap Sahi. |
| Mr. A. H. Mackenzie. | Khan Bahadur Mr. Muhammad Aslam Sahi. |
| Mr. M. F. P. Herchenroder. | Maulvi Zahur-ud-din. |
| Raja Muhammad E'jaz Rasul Khan. | Rao Sahib Abdul Hameed Khan. |
| Raja Bahadur Brij Narayan Rai. | Maulvi Shahab-ud-din. |
| Mr. H. O. Desanges. | Khan Bahadur Chaudhri Amir Hasan Khan. |
| Mr. H. David. | Mr. Muhammad Ismail Ali Khan. |
| Babu Khem Chand. | Maulvi Muhammad Obaid-ur-Rahman Khan. |
| Lala Kishan Lal. | Khan Bahadur Hafiz Hidayat Husain. |
| Babu Narayan Prasad Arora. | Khan Bahadur Shaikh Masud-uz-Zuman. |
| Babu Sangam Lal. | Khan Bahadur Mr. Muhammad Ismail. |
| Babu Mohan Lal Saksena. | Dr. Shafiat Ahmad Khan. |
| Babu Damodar Das. | Khan Bahadur Sayid Muhammad Ashiq Husain. |
| Babu Jai Narayan Chaudhri. | Khan Bahadur Maulvi Fasih-ud-din. |
| Babu Bhagwati Sahai Bedar. | Khan Bahadur Hakim Mahbub Ali Khan. |
| Thakur Manjit Singh Rathor. | Khan Bahadur Mr. Ashiq Husain Mirza. |
| Rai Jagdish Prasad Sahib. | Khan Bahadur Munshi Siddiq Ahmad. |
| Chaudhri Jaswant Singh. | Qazi Habib Ashraf. |
| Rai Sahib Chaudhri Sheoraj Singh. | Raja Sayid Ahmad Ali Khan Alvi. |
| Pandit Nanak Chand. | Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf. |
| Lala Babu Lal. | Shaikh Abdus Samad Ansari. |
| Thakur Rajkumar Singh. | Rai Bahadur Lala Mathura Prasad Mehrotra. |
| Thakur Shiva Narayan Singh. | Raja Shambhu Dayal. |
| Rai Bahadur Babu Ram Nath Bhargava. | Lieut. Raja Shaikh Imtiaz Rasul Khan. |
| Rai Anba Prasad Sahib. | Raja Jagannath Baksh Singh. |
| Rai Bahadur Pandit Kharagjit Misra. | Mr. R. M. Souter. |
| Raja Suryopal Singh. | Mr. Tracey Gavin Jones. |
| Lala Dhakan Lal. | |
| Babu Nemi Saran. | |
| Chaudhri Badan Singh. | |
| Rao Sahib Kunwar Sardar Singh. | |
| Thakur Sadho Singh. | |
| Pandit Brijnandan Prasad Misra. | |
| Pandit Jhanni Lal Pande. | |

THE AGRA TENANCY BILL.

CLAUSE 29.

Babu Sangam Lal : I beg to move that in clause 29(6) after the word "blindness" the words "or any other disease or bodily infirmity" be added.

This amendment does not require very many words from me in its support. To my mind, persons suffering from any other disease or bodily infirmity are in the same position as those who are lunatic or idiot or blind. Suppose a person is suffering from paralysis. Then he is as much incapable of practising agriculture as, for instance, a lunatic or a blind man. There is at the same time no fear of the provisions of this sub-clause being abused, because the moment a person is cured of a bodily infirmity, he becomes subject to clause 29.

Hon'ble Sir Sam O'Donnell : The term "physical disability" or "bodily infirmity" is very vague. A man who has lost one finger or one eye or one ear has a physical disability. Further, it will not be difficult for a man to produce a medical certificate to the effect that his heart is very weak or that his lungs are not up to the highest standard. I have no objection to making any addition to the sub-clause which will have the effect of exempting persons whose physical disability is manifest and unmistakable, but if we put in such vague expressions as "bodily infirmity," there will be considerable litigation and numerous conflicting decisions. That is why we have included only such disabilities as there can be no possible doubt about. The objection, therefore, to the amendment is not one of principle, but a practical one. It is very difficult to specify any other infirmities or disabilities besides those mentioned in the sub-clause, regarding which there could be no doubt.

Mr. Mukandi Lal : Just with a view to meet the argument of the Government, I beg to propose the following amendment, namely, that for the words "any other disease or" in Babu Sangam Lal's amendment the words "any permanent" be substituted, so that the amendment will run "or any permanent bodily infirmity."

Babu Sangam Lal : The objection raised by the Hon'ble the Finance Member does not hold water. The sub-clause runs: "A female, a minor, a lunatic, an idiot, a person incapable by reason of blindness of practising agriculture." If my amendment is made, the sub-clause will read as follows:—"A female, a minor, a lunatic, an idiot, a person incapable by reason of blindness or any other disease or bodily infirmity of practising agriculture". Consequently, if a man loses one eye or one finger, he is by no means incapable of practising agriculture; but if he is suffering from a bodily infirmity such as paralysis, he ought to be placed in the same category as a blind person or a lunatic.

Hon'ble Sir Sam O'Donnell : I admit I did not quite comprehend the intention of the honourable member. He has met one point. I agree that the loss of a finger or an eye or one ear will not render a man incapable of practising agriculture. But the honourable member goes on to say in his amendment "incapable by reason of any other disease or bodily infirmity," and this expression, it seems to me, will give rise to a great difficulty. As I said before, a man may say:—"I have a weak heart, and here is a medical certificate in support of it"

Babu Sangam Lal: But there is the word "permanent."

Hon'ble Sir Sam O'Donnell: Well, his heart may be permanently weak. I have heard of the case of a distinguished officer, who was invalidated out of the army, but who was subsequently a member of the Everest expedition. We all know that sometimes it is not very difficult to produce medical certificates, and I think therefore it is undesirable that courts should be called upon to decide difficult and doubtful points of that nature. The sub-clause, as it is at present worded, seems to me to go far enough.

Question, that the words "any permanent" be substituted for the words "any other disease or," put and negatived.

Question, that after the word "blindness" the words "any other disease or bodily infirmity" be inserted, put and negatived.

CLAUSE 29(7).

Rai Sahib Lala Jagdish Prasad: I beg to move that in line 3 in clause 29(7) for the word "five" the word "two" be substituted.

I am of opinion that as soon as the lessor dies or ceases to come within any of the descriptions given in sub-clause (6), he or his successor, as the case may be, should be allowed to resume the cultivation of the holding with as little delay as possible, and as regards the lessee I consider that two years' time is quite sufficient for him to arrange to quit the holding.

Hon'ble Sir Sam O'Donnell: Sub-clause (7) provides—

"A sub-lease which would be invalid but for the provisions of sub-section (6) shall not remain in force for more than five years after the lessor either dies or ceases to come within any of the descriptions given therein."

Now, Sir, under the Bill on the death of the tenant who has sub-let, the sub-lease cannot continue for more than five years. The object of the amendment is to reduce that period to two years. My objection to that is that five years is the period which the Council has accepted for the heir of the statutory tenant as being a fair period to allow him in which to arrange for fresh cultivation. It seems to me that exactly the same considerations apply to the case of this sub-lease and that five years is the fair and logical period to adopt in view of the acceptance by the Council of the period of five years for the heir.

Amendment by leave withdrawn.

Khan Bahadur Maulvi Fasih-ud-din: I beg to move that in clause 29 a new sub-clause (8) be added as follows—

"(8) All sub-leases shall terminate at the expiry of the term of settlement."

It goes without saying that the system of sub-letting is to be discouraged chiefly on the ground that it produces so many middlemen between the actual tiller of the soil and the owner of the land and also it brings about a widespread system of rack-renting. It is very disadvantageous to the man who ploughs the soil and produces the crops. The principle which underlies this simple amendment of mine has already been recognized by all the revenue laws not only in this province but in the whole of India. This principle existed in all the previous Tenancy Acts and it also exists in this very Bill in the shape of section 71, clause (1). That clause lays

[Khan Bahadur Maulvi Fasih-ud-din.]

down that—"Notwithstanding anything hereinbefore contained, any lease granted or engagement entered into by any landlord fixing the rent of land for any period exceeding the term for which his revenue has been settled shall be voidable on the expiry of the settlement." This, I believe, is a very sound principle. When the leases of the tenants-in-chief are to be considered as null and void as against the landlord at the time of the termination of the term of the settlement, there is absolutely no reason why the sub-leases, the leases of the *shikmis*, which are to be discouraged as a matter of policy should not be permitted to be terminated when the term of the settlement comes to an end. It is for this reason that I move this amendment of mine.

Hon'ble Sir Sam O'Donnell : I have no objection to this amendment.

Mr. Mukandi Lal : I desire to oppose this amendment not only because it is supported by the Government but because only the other day the honourable mover was for keeping the contract and was swearing by the contract. Now he wants to do away with the contract which has been entered into by the sub-lessee. I simply want to remind the honourable mover and the Government whether they recognize the principle of equity or they simply want to please this party or that party, and support or oppose the amendments on that ground.

Pandit Govind Ballabh Pant : I wish to propose an amendment to the amendment moved by Khan Bahadur Maulvi Fasih-ud din Sahib. It is more or less on the line of section 71. I may say that there can be two cases. There may be a case in which on account of the enhancement of the revenue the tenant is being asked to pay a higher rent under section 71, and he has often either to pay the rent which is being demanded on account of the increase in revenue or to surrender his holding or to enter into a fresh agreement. Similarly, under this clause if the rights of the tenant are extinguished under section 71 on the re-settlement of the area, then necessarily under the next clause of this Bill the rights of the sub-tenants will be extinguished. We have to meet the case where the tenant is being asked to pay higher rent than he has been doing so far and where he has entered into a sub-lease on the understanding that he had to pay a definite sum as rent.

I propose that the following be added as sub-clause (8) of clause 29.⁴ I would introduce a few changes in the language of section 71.

"(8) Notwithstanding anything hereinbefore contained any sub-lease granted by a tenant shall be voidable on the expiry of the settlement at his option if his rent is enhanced on account of enhancement of revenue or in consequence thereof, unless the sub-tenant agrees to pay such rent as the court may, at the suit of the tenant, decree in proportion of the enhanced rent."

Hon'ble the President : This is an independent amendment. Is there any objection to its being moved ?

An objection having been taken, the amendment of Pandit Govind Ballabh Pant was disallowed.

Pandit Govind Ballabh Pant : It seems to me quite unfair that after having received a premium for two years in advance it should be open to a tenant to say to his sub-tenant that the latter cannot have the benefit of the sub-lease and that it would be cancelled.

Khan Bahadur Maulvi Fasih-ud-din : The only objection which my honourable friend Pandit Govind Ballabh Pant has raised is that if a premium for two years has been taken, it will be unfair for a tenant to say, just at the expiry of the term of the settlement, that his sub-tenant's lease has come to an end. I think that if the settlement is coming on after two years, no sub-tenant will give a premium for more than two years. If it is coming on after a year, the sub-tenant will give a premium for one year only because he knows that the term of the settlement is to come to an end after a year. So no difficulty arises. My amendment is based on the same principles as are laid down in clause 71. I therefore press it.

Hon'ble Sir Sam O'Donnell : I should have no objection to the altered motion if it had been slightly re-drafted. But I do not think that the point about the lease on a premium of two years is a particularly strong one, because obviously the sub-lessee is not going to give a premium of two years or one year, whatever the period may be, if he knows that the settlement is coming on, and that consequently the transaction would be voidable at the option of the tenant.

Question, that the words "all sub-leases shall terminate at the expiry of the term of settlement" be added as sub-clause (8) of clause 29, put and agreed to.

Thakur Rajkumar Singh : I propose to delete the whole clause and sub-clauses and substitute the following :—

"No tenant of whatsoever class save a permanent tenure-holder or a fixed-rate tenant shall sub-let the land except with the written permission of the lambardar :

Provided that a female, a minor, a lunatic, an idiot, a blind or one in the military service other than a reservist shall not be subject to the rule. But this shall not apply in the case of a joint tenancy."

As has been discussed sufficiently in the House that sub-letting is an evil, I propose that it should not be allowed that a tenant should be allowed to sub-let. Besides there will be enough of rack-renting and it will be against the interests of both the landlords and the tenants. Hence I move this amendment.

Hon'ble Sir Sam O'Donnell : I must oppose this amendment. No such restriction has ever been imposed in any other tenancy Act. I am as much against continuous sub-letting as any other honourable member, but it is quite clear that occasions may arise on which a tenant has to sub-let his land for quite legitimate purposes. We have in the remainder of this clause imposed very definite restrictions both on the occupancy tenant and on the statutory tenant, and those restrictions surely go quite far enough. The occupancy tenant can sub-let for five years and must then cultivate for five years. The statutory tenant can sub-let for three years and must then cultivate for another three years. But this proposal is that in every case the landlord is to have the right to refuse to allow the tenant to sub-let even for one year. Surely that is not reasonable ; surely the tenant should have some right to sub-let without having to obtain the permission of the landlord. Under Act II of 1901, the permission of the landlord is not necessary. It is not necessary under the Oudh Rent Act, and it was not necessary under the old Oudh Rent Act. And I do not think there is any Act in the whole of India which imposes a restriction of this kind. It will operate very harshly and very unfairly to the tenant.

Khan Bahadur Mr. Muhammad Ismail: I wish to move an amendment to the amendment. In the second line after the word "fixed-rate," insert the words "or occupancy."

Hon'ble the President: That will be enlarging the scope of the amendment and it requires notice. Is there any objection to the moving of this amendment?

An objection having been raised the amendment was disallowed.

Question, that clause 29, as amended, stand part of the Bill, put and agreed to.

The amendment of Thakur Rajkumar Singh, therefore fell.

CLAUSES 30, 31, 32 AND 33.

Question, that clauses 30, 31, 32 and 33 stand part of the Bill, put and agreed to.

CLAUSE 34.

34. (1) Every transfer, other than a sub-lease, made by a tenant in Transfers which are contravention of the provisions of this Act, and every void or voidable. sub-lease made by a tenant in contravention of the provisions of section 27, shall be void.

(2) Every sub-lease made by a tenant in contravention of the provisions of this Act, other than a sub-lease which is void under sub-section (1) shall be voidable at the option of the landholder.

Pandit Govind Ballabh Pant: I move that in clause 34(1) the words "and every sub-lease made by a tenant in contravention of the provisions of section 27" be omitted.

It is not necessary for me to remind the honourable members of some of the arguments that were advanced on the floor of this House yesterday. The motion that I am proposing does not affect the merits of the question in the least. What I propose is only this, that all sub-leases are in a way concerned with the landlord and the tenant. The only persons who are interested in the land, so long as the Government gets its quick tax in the form of revenue, are the landlord and the tenant, and the landlord and the tenant are the persons who are entitled to make any arrangement they like in respect of the holding. Under this clause even if the landlord does not want to avoid any sub-lease given by the tenant, it has to be regarded as void. It will not be to the advantage of anybody that such sub-leases should be *ab initio* void. If the landlord has any objection then he can avoid them. What I propose is that these words be omitted from this sub-clause. The effect of it will be that leases that come within section 27 will also be governed by sub-clause 2. So that, whenever any sub-lease is given by any tenant, then it will be for the landlord to sue for its voidness and he will always be free to get it cancelled. It enlarges the powers of the landlord. It adds to his authority, it makes the tenant subject to his control; it gives him the benefit of any sub-lease that he may choose to give to any sub-tenant. I think it is in the interest of the landlord that they should have such a provision in the Bill; otherwise it will be detrimental to their authority as well as, on occasions, to the interest of the tenant.

Hon'ble Sir Sam O'Donnell: I do not propose to enter again on the discussion of the general question of the *sar-i-peshgi* leases. We discussed that at considerable length yesterday and I think the majority of the Council at least were agreed that *sar-i-peshgi* leases were an

unmitigated evil. Under the present law sub-leases are merely voidable ; under the Bill they will be void. The reason for proposing that they should be void is that the existing provision has not prevented such leases being executed. We quoted yesterday evidence from the settlement report of Gorakhpur on that point. We showed that thousands of such leases were executed in spite of the provision about their being void and that the result of that was that the co-tenant ceased to have any connexion with the land or, if he remained on the land, he remained merely as a sub-tenant of his own sub-lessee at a rack-rent.

Pandit Govind Ballabh Pant : No confusion should be created by the reference to yesterday's debate, as I am not asking today that such sub-leases should be valid. I accept the verdict of the Council on the point that such sub-leases should not be valid and I am going to make them voidable. But the point which is before the House is this, whether it should be for the landlord to say that such a sub-lease will not be valid or whether it is for the Government to say that even if the landlord and the sub-tenant and the tenant agree, in spite of the agreement of all these parties, the sub-leases shall be void. I think the reference to the Gorakhpur settlement report does not in any way affect my argument. If anything, it means this ; that there may be occasions when it may be profitable for the landlord to agree to an arrangement of this character between the sub-tenant and the tenant. So I do not see why the landlord's powers should be curtailed ; for the effect of this provision should be clearly understood. It only means to this, say that it will not be for the landlord to say that I permit my tenant to give such a sub-lease. In fact by means of this provision only the powers of the landlord are being restricted, and by means of the amendment that I am proposing I mean to enlarge it. Now it is for the honourable members of this House to decide whether the landlord's powers and authority should be restricted or enlarged. Under the present law, leases that are given for a premium are valid ; they are neither void nor voidable. If a man gives a lease for five years, then it is valid. I want to place leases that are given for a premium or for money received in advance exactly on a par with other leases. When there is any sub-leases in contravention of the other clauses of the section relating to sub-leases, then it is for the landlord to say whether he will have it, or accept it or reject it under the second sub-clause of this clause. Similarly, I say that in respect of these, too, the landlord should have that power.

Hon'ble Sir Sam O'Donnell : If we are opposed to this amendment, it is on ground of public policy. It may be that the landlord gets his *quid pro quo* but the effect will be detrimental to the interest of the cultivators of the soil. That is why we are against this amendment.

Question put that the words "and every sub-lease made by a tenant in contravention of the provisions of section 27" do stand part of the Bill.

The House divided : *Ayes*, 54 ; *Noes*, 19.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Sa'id Khan.
Hon'ble Rsi Rajeshwar Ball.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.

Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.

Ayes.

Mr. R. L. Yorke.
 Mr. R. Burn.
 Mr. A. W. Pim.
 Mr. B. J. K. Hallowes.
 Mr. E. L. Norton.
 Mr. H. G. Billson.
 Mr. R. J. S. Dodd.
 Colonel A. W. R. Cochrane.
 Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenroder.
 Raja Muhammad I'jaz Rasul Khan.
 Raja Bahadur Brij Narayan Rai.
 Mr. H. David.
 Babu Khem Chand.
 Lala Kishan Lal.
 Babu Jai Narayan Chaudhri.
 Chaudhri Jaswant Singh.
 Rai Sahib Chaudhri Sheoraj Singh.
 Thakur Rajkumar Singh.
 Rai Amba Prasad Sahib.
 Lala Dhakan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Lieut. Raja Durga Narayan Singh.
 Raja Narayan Pratap Singh.

Rai Bahadur Pandit Balbhadra Prasad Tiwari.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 Kunwar Surendra Pratap Sahi.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid-ur Rahman Khan.
 Khan Bahadur Hafiz Haidayat Husain.
 Khan Bahadur Shaikh Masud-uz-Zaman.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq Husain.
 Khan Bahadur Maulvi Fasil-ud-din.
 Khan Bahadur Mr. Ashiq Husain Mirza.
 Raja Shambhu Dayal.
 Lieut. Raja Shaikh Imtiaz Rasul Khan.
 Raja Jagannath Bakhsh Singh.
 Mr. Tracey Gavin Jones.

Noes.

Babu Narayan Prasad Arora.
 Babu Sangam Lal.
 Babu Mohan Lal Saksona.
 Babu Bhagwati Sahai Bedar.
 Pandit Nanak Chand.
 Thakur Shiva Narayan Singh.
 Babu Nemi Sarau.
 Thakur Badho Singh.
 Pandit Brijnandan Prasad Misra.
 Pandit Jhanni Lal Pande.

Pandit Sri Krishna Dutt Paliwal.
 Pandit Yajna Narayan Upadhyay.
 Bhaya Hanumat Prasad Singh.
 Pandit Govind Ballabh Pant.
 Mr. Mukandi Lal.
 Babu Ram Chandra Sinha.
 Dr. Jaikaran Nath Misra.
 Rao Sahib Abdul Hameed Khan.
 Qazi Habib Ashraf.

Question, that clauses 34, 35 and 36 stand part of the Bill, put and agreed to.

CLAUSE 37.

37. (1) *Subject to the provisions of sub-section (2), a division of*
a holding or distribution of the rent payable
 Division of tenancies. *in respect of a holding, or any portion thereof, shall*
 be effected only by agreement between the co-tenants thereof and it shall
 not be binding on the landholder unless it is effected with his consent.

(2) One or more of the co-tenants of a holding may sue the others for
 a division of the holding, but no division shall be binding on the landholder
 unless he agrees to it in writing.

Rai Bahadur Thakur Hanuman Singh: I rise to move that in line 2
 of sub-clause (2) between "holding" and "comma" the words "and
 distribution of rent" be inserted. This is a verbal amendment. I
 have moved it in order to bring this sub-clause in conformity with sub-
 clause (1).

Hon'ble Sir Sam O'Donnell: I see no objection to the amend-
 ment; in fact I think it does slightly improve the wording.

Question, that in sub-clause (2) of clause 37, line 2, after the word
"holding" the words "and distribution of rent" be added, put and
agreed to.

Question, that clause 37, as amended, stand part of the Bill, put and
agreed to.

CLAUSE 38.

38. A tenant who has a right of occupancy in any land shall have a right of occupancy in any other land which he may receive from the landlord in exchange therefor and shall thereupon cease to have a right of occupancy in the land so given by him in exchange :

Right of occupancy in land exchanged with landlord.
 Provided that, notwithstanding anything in this section, a right of occupancy shall not accrue in land in which a right of occupancy could not be conferred under section 17(3).

Pandit Nanak Chand : I move that between the words " occupancy " and " in " in lines 1, 2 and 5 insert " or right of a statutory tenant ". The clause as amended would read as follows :—

" A tenant who has a right of occupancy or right of a statutory tenant in any land shall have a right of occupancy or right of statutory tenant in any other land which he may receive from the landlord in exchange therefor and shall thereupon cease to have a right of occupancy or right of a statutory tenant in the land so given by him in exchange."

The present clause proposes to provide for cases of exchange between a landlord and an occupancy tenant alone. I want to make it clear that when a landlord and a statutory tenant exchange land between themselves the lands received in exchange will acquire the character of land given in exchange otherwise. When a landlord wants a plot of a statutory tenant for exchange for his own cultivation, he may find it difficult to do it. I want to make it possible for a landlord to exchange his land with the land of a statutory tenant as he can do in the case of an occupancy tenant.

Hon'ble Sir Sam O'Donnell : I think the Council will at once realize that this amendment is entirely unnecessary. If a statutory tenant is admitted to land in exchange for land given by him, he is admitted to land and accordingly becomes a statutory tenant under clause 19 in the land received in exchange. There is no point whatever in making this alteration.

Pandit Nanak Chand : I beg to withdraw my amendment.

Amendment by leave withdrawn.

Question, that clause 38 stand part of the Bill, put and agreed to.

CLAUSE 39.

39. (1) If two tenants of the same class other than tenants of *sir* or Exchange of land sub-tenants agree to exchange land owned by the same landlord with his written consent or owned by different landlords with the written consent of the latter, the tenants may apply to the court to give effect to the exchange.

(2) On exchange the tenants shall have the same rights in the land received in exchange as they had in the land given in exchange.

Pandit Nanak Chand : I move that in clause 39(1) between " two " and " tenant " insert " or more." The object of my moving this amendment is that the sub-clause as it stands at present permits of exchange only between two tenants and not more. I want to provide that if the zamindar gives his consent as is provided later on in this sub-section it should be possible for more tenants than two to arrange for exchange of fields between themselves.

Hon'ble Sir Sam O'Donnell: I think this is an unnecessary amendment. The natural exchange is between two tenants. I do not think that we should make this section complicated by the addition of the words "or more."

Pandit Nanak Chand: I think, Sir, that everything which emanates from the non-official side is unnecessary. I know many other instances of the amendments from the non-official members which have been described as unnecessary.

Hon'ble the President: The honourable member should confine himself to the merits of the amendment.

Pandit Nanak Chand: I come to it Sir. There might be cases where tenants have to so exchange their holdings that the exchange may not be between two tenants only. It may be between three, four or even more and when this exchange has to take effect with the written consent of the landlord I do not see why this unnecessary restriction should be put upon this exchange and it should be limited to two tenants only. It is quite possible that a tenant *A* might give his land to *C* and he might like to get the land of *B* in exchange for the same while *B* might agree to receive land from *C* in exchange for land given to *A*. I think there ought to be no restriction as is proposed by the word "two" and it should be left to the zamindar to see that the arrangement is made with his consent and if that arrangement is made there should be no objection.

Hon'ble Sir Sam O'Donnell: If I have opposed a certain number of amendments moved by Pandit Nanak Chand on the ground that they are unnecessary it is because they are unnecessary. If the honourable member will only study the clauses of this Bill with more attention I think he will agree with me. In this particular case even though there are ten tenants the real exchange will always be between two tenants. That is the whole point.

Question, that in sub-clause (1) of clause 39 between the words "two" and "tenants" the words "or more" be inserted, put and negatived.

CLAUSE 39(1).

Pandit Nanak Chand: I beg to move that the words "of the same class" in sub-clause (1) of clause 39 be deleted.

This is another unnecessary restriction and I think in the interest of consolidation of holdings it should disappear. Why should it be limited to an exchange of an occupancy plot with an occupancy plot. Why should it not be possible for an occupancy tenant to exchange a plot with a statutory tenant or a non-occupancy tenant if it is to be with the consent of the zamindar, I think this restriction might be removed.

Hon'ble Sir Sam O'Donnell: So far as this particular amendment is concerned I think it is also unnecessary.

Question, that the words "of the same class" stand part, put and agreed to.

Pandit Nanak Chand: Sir, I beg to move that in clause 39(1) the words "tenants of sir or" be deleted.

If there are two tenants of *sir* of the same zamindar and they want to exchange certain plots of land with the permission of the zamindar, why should it not be permitted?

Hon'ble Sir Sam O'Donnell : This, Sir, I am afraid, is again an unnecessary amendment. The landlord will have to give his consent for such exchanges. Therefore, there is nothing to be gained by this amendment. It must be remembered that the tenants of *sir* can be ejected at any time. Therefore, this amendment will serve no purpose whatever.

Pandit Nanak Chand : I withdraw the amendment.
Amendment by leave withdrawn.

Rai Sahib Chaudhri Sheoraj Singh stood to move an amendment in his name.

Hon'ble the President : Notice of this amendment was received yesterday. Is there any objection to the amendment being moved?

Hon'ble Sir Sam O'Donnell : I object, Sir, on the ground that I have had no time to study it.

Hon'ble the President : Objection having been taken it cannot be moved.

Question, that clause 39 stand part of the Bill, put and agreed to.

CLAUSE 40.

40. (1) A collector *shall*, if he is satisfied that reasonable grounds exist, on the application of the *landlord*, not being a lessee or mortgagee, of a holding other than the holding of a permanent tenure-holder or fixed-rate tenant, order the acquisition of the holding or part thereof for any of the following purposes, namely,—

Acquisition of land by
landlord from his tenant.

- (a) for agricultural development including farming on improved lines, dairy farms, poultry farms, stock-breeding, horticulture or any similar purpose;
- (b) for his own cultivation;
- (c) for groves;
- (d) for planting trees;
- (e) for building houses, out-houses, for the *landlord* or other buildings necessary for the management or development of the estate;
- (f) for the erection of houses for tenants and labourers;
- (g) for sites for hamlets or markets;
- (h) for opening or working a limestone, brick-earth, kankar, or other mineral quarry, or a clay, sand or gravel pit, or for the construction of any works or buildings used in connexion therewith;
- (i) for mills or factories for industrial purposes;
- (j) for making any water course, reservoir, or canal;
- (k) for making any road, railway or tramway;
- (l) for any educational, religious, or charitable purposes; on such terms as may be agreed upon between the *landlord* and the tenant or failing such agreement, on awarding such compensation as the tenant may be entitled to under this section, and shall

thereupon order the ejectment of the tenant from the holding or part thereof acquired.

(2) * * *

(3) Under sub-section (1) (c) and (d) of this section the acquisition shall not be *ordered* when suitable land not included in any holding is available.

(4) The amount of compensation for dispossession shall not exceed in the case of tenants with a right of occupancy six times and in the case of other tenants four times the annual rental value of the land acquired at the rates prescribed for statutory tenants in sub-section 3 (b) or (4) of section 59 and shall be in addition to the amount of compensation, if any, due for improvements.

(5) The tenant shall be entitled to a reduction of rent proportionate to the rental value of the part of his holding acquired, and the amount of such reduction shall be determined by the collector.

(6) Land in which a tenant has a right of occupancy may not be acquired for any of the purposes mentioned in sub-section (1) (b), (c), (d) or (e), and if such land is acquired for any other purpose the court shall award to the tenant equal land with similar advantages, or if such land is not available to a sufficient extent the court shall make up the balance by monetary compensation in accordance with sub-section (4); the court in awarding compensation shall take into account the letting value of any land given in exchange.

(7) The acquisition of part of a holding under this section shall not affect the right of the tenant in the remainder of the holding:

Provided (a) that no land belonging to the holding of *an occupancy* tenant cultivating in all *six acres* or less shall be acquired *for any purpose other than purpose (a) in sub-section (1)*, and that no *occupancy* holding shall be reduced to a size insufficient to maintain the tenant and the members of his family dependent on him, unless the landlord replaces the area acquired with other land in the same village, or with the consent of the tenant in another village, of such area and quality as the court considers to be reasonable *or the acquisition is for purpose (a) in sub-section (1)*.

(b) that if the land acquired under this section is not used for the purpose specified *or is used for any other purpose* by the *landlord* within two years from the date of ejectment, or

(c) that if within six years of the date of ejectment land acquired under sub-clause (1) (a), (b), (c) or (d) is let to another tenant, the dispossessed tenant, if he has not been admitted by the *landlord* to the occupation of another holding *under any agreement whereby the dispossessed tenant has waived his rights under this proviso*, shall be entitled by application to the collector on the expiration of the said period of two years, or, in the case provided for in proviso (b) as soon as the other tenant is admitted *or the land is used for any purpose other than the purpose for which it was acquired*, to recover his holding or part thereof acquired at the rate of rent payable at the date of ejectment, on the condition of repayment to the *landlord* of the amount of compensation received by him on account of the acquisition of his holding or part thereof, less such sum as the court may determine on account of compensation for dispossession at a rate not exceeding the annual rent payable on the holding or part thereof acquired for each year of the period of dispossession.

Khan Bahadur Muhammad Ismail: I move that the following sub-clauses be substituted for (1), (4), (6) and (7):—

“(1) A collector shall, on the application of the landlord, not being a lessee or mortgagee of a holding other than the holding of a permanent tenure-holder or fixed-rate tenant, or a tenant with a right of occupancy, order the acquisition of the holding or part thereof for the purpose specified in sub-clause (b); and if he is satisfied that reasonable grounds exist he may pass a similar order for any of the other purposes mentioned below, in the manner hereinafter provided, namely,—”

Before I proceed further I want to move a modification to make my meaning clear. In line eight for the words “pass a similar order” I want to substitute the following words:—“order the acquisition of the holding of any tenant other than a permanent tenure-holder or a fixed-rate tenant.”

Pandit Nanak Chand: Is the honourable member entitled to move an amendment to the amendment?

Hon'ble the President: He is entitled to modify his amendment, certainly before moving it, to make his meaning clear.

Khan Bahadur Mr. Muhammad Ismail: I move sub-clause (1) with this modification.

“(4) The amount of compensation for dispossession shall be in the case of tenants with a right of occupancy six times, and in the case of other tenants five times, the annual rental value of the land acquired at the rate paid by statutory tenants for land with similar advantages.

“(6) Land in which a tenant has a right of occupancy shall not be acquired except for farming on improved lines, and the court shall award the tenant equal land with similar advantages in the same village or with the consent of the tenant in another village, but if such land is not available at all or to a sufficient extent or the tenant does not consent to take it in another village, the court shall award monetary compensation for it in accordance with sub-section (4): the court in awarding compensation shall take into account the letting value of any land given in exchange.

“(7) The acquisition of part of a holding under this section shall not affect the right of a tenant in the remainder of a holding:

Provided (a) that no land belonging to the holding of a statutory tenant cultivating in all four acres or less as a statutory or occupancy tenant will be acquired, nor shall the part of any holding be acquired to such an extent as to reduce the occupancy and statutory area in his possession to less than four acres, except for farming on improved lines, unless the landlord replaces the area to be acquired with other land in the same village or with the consent of the tenant in another village, of such area and quality as the court considers reasonable: provided that where it is necessary to acquire the land of a tenant without leaving for him the minimum area prescribed above, the landlord may apply to the collector for acquisition of such area as may be required to make up the above minimum, and the land of such a tenant may be acquired on its being replaced by the area so acquired for him; and in such a case the tenant whose land is so replaced will get no compensation for the area which he gets in exchange, but the same will be paid to the tenant from whom the land given in exchange was acquired, and this acquisition will be made in the course of the same proceeding.

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(b) That if the land acquired under this section is not used for the purpose specified within two years from the date of ejectment, or that, if within six years from the date of ejectment land acquired under sub-section (i) is used for any purpose other than that for which it was acquired, or land acquired under sub-clause (1) (a), (b), (c) or (d) is let to another tenant, the dispossessed tenant, if he has not been admitted by the landlord to the occupation of another holding under a written agreement whereby the dispossessed tenant has waived his right under this proviso, shall be entitled by application to the collector on the expiration of the said period of two years, or as soon as the other tenant is admitted or the land is used for any purpose other than the purpose for which it was acquired, to recover his holding or part thereof acquired at the rate of rent payable at the date of ejectment without repaying the compensation received by him on account of the acquisition of his holding or part thereof."

Sir, the system of life-tenancy was introduced for the first time a few years ago in Oudh and a provision for the compulsory acquisition of the land was a necessary corollary to it. As the honourable members are aware, in the Oudh Act the collector was not bound to order the acquisition of the land if he found reasons to the contrary to reject the application. The experience of Oudh zamindars shows that the collector invariably found reasons to the contrary and application after application was rejected, leaving behind it a legacy of bitter feelings between the landlords and the tenants. A few years afterwards when the Agra Tenancy Act was to be amended and a drafting committee was appointed which was presided over by Sir Selwyn Fremantle. In clause 32(c) of the draft they made improvements on the acquisition clause in the Oudh Rent Act. Under clause 32(c) of the drafting committee it was provided that the collector shall order the acquisition of the holding for self-cultivation, for planting of groves and trees and some other purposes, and if the land was required for some other purpose the collector was to inquire into the matter and had to use his discretion whether the land was required for the purpose for which it was applied and it was suited for that purpose. This clause was approved by the Agra zamindars and they thought that it was by way of compensation to the conferment of life-tenancy. I may also point out, Sir, that the drafting committee consisted of most experienced revenue officers, for instance, Mr. Burn, senior member of the Board of Revenue, and Mr. Lane, who is chiefly responsible for the draft of this Bill, was the secretary of that committee. The committee also consisted of a number of gentlemen who cannot be considered pro-zamindars and who are well known for sympathies with the tenants, for instance, Rai Bahadur Lala Sita Ram and Pandit Brijnandan Prasad Misra.

Pandit Brijnandan Prasad Misra : I sympathize with both, and not with one.

Khan Bahadur Mr. Muhammad Ismail : I need not mention the name of Khan Bahadur Maulvi Fasih-ud-din who is supposed to be a champion of the zamindars only. I may also point out that this draft was approved by all the members of the committee and there was not a single dissentient voice. To our great surprise, Sir, when the draft was put before the Select Committee we found that this clause 32(c) had undergone most drastic changes and for all intents and purposes it was a useless section, purely illusory and it gave no power of acquisition to the zamindar

however greatly he may require the land. Honourable members are aware of the provisions of that section and I need not repeat them. But I may point out that discretion was left to the collector to order acquisition or not as he pleased. There was also a provision that if the holding of the tenant consisted of ten bighas or less and the balance left with the tenant after the acquisition of the land was insufficient for the upkeep of the family, the application could be rejected. Naturally this did not satisfy the zamindars of Agra. The Select Committee could not make any satisfactory changes, and the draft before us for consideration was the result of the modification made by the Select Committee. A number of zamindar members have submitted amendments to the section which was more or less on the lines of clause 32(c) of the drafting committee.

Hon'ble the President : Where were the amendments submitted ? In the Select Committee ?

Khan Bahadur Mr. Muhammad Ismail : No, Sir. They were submitted here to the Council. I know the ruling of the Chair and I would not transgress it. We found that our amendments did not meet with the wishes of either the members of the Swaraj party or of the Government. Therefore we thought it fit to come to some sort of settlement and we are deeply indebted to our swarajist friends, particularly their leader, the honourable member for Naini Tal, that they agreed to certain changes in the amendment. The present amendment which I have the honour to move is the result of our joint deliberation. You will find that we have made every possible safeguard for the tenant in the case of misuse of his power by the zamindar. If within six years the zamindar leases out the land to some one else or uses it for some other purpose, he forfeits the compensation and the land will be given back to the tenant. There is a further safeguard for the tenant, to which I have already referred, which enjoins that no tenant holding the minimum area of four acres is to be touched except in certain cases which I have specified. We have also provided that where it is necessary to acquire the land of a tenant without leaving for him the minimum area, the land of such a tenant can be acquired only on its being replaced by the area so acquired from him. The rate of compensation for dispossession according to some of us is prohibitive. At the same time we have this satisfaction that we have provided that if the zamindar requires land for self-cultivation, he can do so compulsorily from the statutory tenants, and in this respect the collector shall have no power of interference. He will have to see, however, that reasonable grounds exist in regard to the acquisition of land for other purposes.

I need not dilate upon reasons in favour of the amendment. The zamindars have given a great deal to the tenants—whether by force or willingly it does not matter. It is therefore only meet and proper that in return the Council should endeavour to meet the requirements of those zamindars who want land for the upkeep of their families. There is no doubt that under clause 4 *sir* rights have been given to the zamindars in respect of land which they are actually cultivating at the present time, but from this it should not be inferred that if they do not require land for cultivation today, they will not require any ten years after. To meet this end clauses 4 (*dd*) and 42 were inserted in the Bill, but now that they have been removed clause 40 is the only one which is designed to meet the requirements of persons who honestly require land for

[Khan Bahadur Mr. Muhammad Ismail.]

self-cultivation. In the circumstances I trust the Council will attach due weight to the draft of the 1924 committee, which, as I have said, was constituted of the most distinguished members of the Government and the Council, by accepting the amendment which I have moved.

Hon'ble Sir Sam O'Donnell: Clause 40 is one of the provisions by which we have sought to give the landlords facilities for acquiring such land as they really need. In clause 40 we have provided for the acquisition of *sir*. This clause will provide for the acquisition of land other than *sir*, which the landlord may require for his own cultivation or other legitimate purposes. It is entirely just and reasonable that a provision of this kind should be included in the Bill. The conferment of statutory rights on the tenants ought not to debar the landlord from taking up land which he really needs. But, Sir, a power of compulsory acquisition vested in private persons is obviously, unless adequate safeguards are introduced, liable to grave abuse. There is in the Oudh Rent Act an analogous provision, namely, section 30A, and every single deputy commissioner has reported that numerous and constant attempts are made to use that section in a way which it was never intended. For example, the Deputy Commissioner of Kheri says:—"In the majority of applications under this section 30A the object of filing them appears to be merely to put pressure on the tenant either to vacate his land or to agree to an enhancement, and it is a section which is very likely to be abused and should be modified and repealed." The Deputy Commissioner of Unao is of the same opinion and says that "the large majority of applications in his district were filed simply and solely because the applicant thought that the new section presented him with a new weapon in lieu of ejectment by notice abolished by the Amendment Act." The Deputy Commissioner of Lucknow says:—"The section was generally resorted to as a desperate hope of getting rid of tenants whose rents they have been unable to enhance or whom they have failed to eject by other means." In the face of these reports we felt it to be essential that there should be adequate safeguards, and we therefore introduced in the draft Bill prepared by the committee of 1924 the words "if satisfied that reasonable grounds exist." I confess I cannot understand why the committee of 1924 thought it advisable to omit the words contained in the Oudh Rent Act, especially when we had sent to them the reports of the deputy commissioners. Those reports seem to me to show conclusively that compulsory acquisition, if it is to be allowed, must be accompanied by genuine and effective safeguards. In our opinion the condition that we have proposed, namely, that the collector must be satisfied that reasonable grounds exist, is not only the most effective but also the fairest safeguard. It is not the case that the clause as in the Bill would prevent the landlords from getting land which they really need. It is not the case that all applications have been rejected in Oudh. I find, for example, in one district, i.e., Unao, sixteen applications were sanctioned and twenty-eight dismissed. I find again in Bara Banki that most of the applications were granted. It is not therefore correct to say that section 30A is a dead-letter in Oudh and that genuine applications are rejected. I am quite certain that any landlord who really needs land for his own cultivation or for other legitimate purposes would, under the clause as drafted by us, have no difficulty in obtaining such land. If there have been any

cases in Oudh in which applications of that kind have been rejected, I can only say that particulars of such applications have never been given to us.

Now, so far as the occupancy tenant is concerned, I have no objection to this amendment. As far as I can see their position under the amendment will be substantially the same as under the clause as drafted by us. But, Sir, the amendment does make a vital difference as regards statutory tenants. Under the amendment the land must be acquired on the application of the landlord. It makes no difference of course whether you specify one purpose or whether you specify fifty purposes. The essential point is that if the landlord applies for land, it must be acquired.

Now, Sir, I recognize that certain safeguards which are alleged to be effective have been introduced. Compensation has been increased from four years' rent to five years' rent. It is also laid down that a holding shall not be reduced below four acres. So far as they go, these are improvements; but in our opinion they do not go far enough. If the condition laid down in our draft, *v.z.*, that the collector must be satisfied that reasonable grounds exist, is to be deleted, it is in our judgement essential that two conditions should be fulfilled. There must be a decidedly liberal scale of compensation, and the area reserved for the tenant should be a generous minimum. I admit that the provision as regards the four-acre limit will protect a number of tenants, more particularly in the east of the provinces where the holdings are small; but this will not be the case in the west of the provinces where the average holding is much greater than four acres. For example, in the Meerut division I understand that the average holding is $8\frac{1}{2}$ acres. If in the case of such tenants the area of the holding is reduced to four acres, the result will be that usually the tenant will have to abandon his holding altogether. These tenants have been accustomed to live on holdings of a certain size. Their whole standard of living is adjusted to such holdings. They will not be able to live on a holding which is reduced to four acres. They will be compelled to go elsewhere and seek their livelihood in some other village or by some other means. Moreover, under this amendment the area of disturbance is widened, because if sufficient land cannot be obtained from one tenant, it can be obtained by taking the land of a second tenant. I do not suggest by any means that all landlords would abuse the power which this amendment would give to them, nor do I suggest that the object of those who framed the amendment is that it should be abused. Nor again, Sir, do I fear that the actual number of ejections will be large. But, Sir, what I do fear is that the section will be used as a means of bringing pressure to bear on the tenant. Every statutory tenant who has a holding larger than four acres will live under a perpetual menace. He will never know that he is secure in his holding. The amendment will enable the door to the landlord to say to the tenant at any time "I can and will eject you, unless you agree to my terms." In that way the security of tenure which we have sought to give to the tenants will be vitally impaired.

Now I am compelled to say, as I said as regards clause 42, that I cannot believe that the real object of this amendment has been fully disclosed in the course of this debate. I cannot think that those honourable members who are in favour of this amendment are really very much concerned with the question of *khudkasht*. I think that is not the matter which is at the back of their minds. I think they are really concerned with the question of power. They fear that if a provision of this kind is not included in the Bill, the result will be that the landlord will lose his hold

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over the tenant, and that his influence in the villages will be impaired. Well, Sir, perhaps it is inevitable that when a measure of this kind is introduced, fears of this sort should arise. Nevertheless, I believe these apprehensions to be entirely baseless. History is full of cases in which a measure affecting a particular class has been denounced by that class as meaning their ruin, and history has again and again falsified such anticipations. The class concerned has not been destroyed. It has continued to flourish. I have no doubt that when the Oudh Rent Act was under discussion many landlords in Oudh feared that for them it would be the end of all things. Have such fears been realized? Will any Oudh landlord get up and say that his legitimate influence has been destroyed in Oudh? I cannot believe it. There is not a shred of evidence to show that the legitimate influence of the landlords in Oudh has been impaired. Sir, the acceptance of this amendment will make a serious inroad on the policy of the Bill. It will expose a large body of tenants to a perpetual threat of ejectment. I appeal to the landlords to discard the fear that the clause as drafted by us will undermine their position. I am quite certain that it will have no such effect. I appeal to them to discard the idea that only by expedients of this kind can they maintain their influence. It is not by such means that they will be able to do so. It is by establishing fair and equitable relations between them and their tenants that they will retain their great position, and a provision that exposes the tenants to a perpetual menace cannot make for good relations between the landlords and the tenants.

Pandit Govind Ballabh Pant : I propose an amendment to the amendment of Khan Bahadur Mr. Muhammad Ismail with a view to make the language more clear.

In clause (1) after the words "fixed-rate tenant" in the modification proposed the words "for the purpose of farming on improved lines and of the holding of any tenant other than a permanent tenure-holder, a fixed-rate tenant or an occupancy tenant" be added.

The amended sub-clause (1) would then run as follows :—

"A collector shall, on the application of the landlord, not being a lessee or mortgagee of a holding other than the holding of a permanent tenure-holder or fixed-rate tenant, or a tenant with a right of occupancy, order the acquisition of the holding or part thereof for the purpose specified in sub-clause (b); and if he is satisfied that reasonable grounds exist he may order for the acquisition of the holding of any tenant other than a permanent tenure-holder or fixed-rate tenant for the purpose of farming on improved lines and of the holding of any tenant other than a permanent tenure-holder, a fixed-rate tenant or an occupancy tenant for any of the purposes mentioned below, in the manner hereinafter provided, namely,—"

I shall reserve my remarks for a later stage.

Hon'ble the President : The honourable member had better say what he has to now.

Pandit Govind Ballabh Pant : I really regret that I have to speak at this stage. I had in fact no intention of doing so and had thought that I would not utter a single word unless I felt the absolute necessity of saying something in this connexion. As the

Hon'ble the Finance Member has remarked, this clause is one of the vital provisions of this Bill and it can directly as well as indirectly affect the provisions of the Bill in a number of ways. At the same time he agreed, and we are all agreed, that the landlord should have sufficient land to meet his own requirements out of the land which is under his absolute control at present and over which certain restrictions are being imposed by the scheme of this Bill. For when on the one hand his liberty is being restricted of dealing with the land over which statutory rights are being conferred in any way he likes, it is desirable that some sort of provision should be made by means of which he may be able to acquire sufficient land for his genuine requirements. I think so far there is probably no difference of opinion between any two members who are sitting in this House. But it does raise a number of difficulties when we make an attempt to apply this principle in actual practice; for it is so difficult to make any provision which will absolutely meet the requirements of the zamindars on the one hand and at the same time completely protect the tenants on the other. It has always been one of the difficult problems of this world how to readjust conflicting interests of parties, and in a case of this character where, whenever land is sought to be acquired for the landlord, there must naturally be the ejectment of the tenant from the land so acquired, the difficulties are patent and obvious enough. So, whatever provision is made, it must create certain difficulties. Honourable members of this House who have read our minute of dissent must have been satisfied on one point, and that is this, that we have an innate repulsion for section 40 as it existed and we are not very much reconciled to section 40 as it is. But, Sir, in practical politics we have to see to it on the one hand that the ends that we attain are attained with the greatest amount of harmony between us, and on the other that any mischief is minimized to the largest extent possible so far as our imagination can go. So, while we are fully conscious and while, in spite of all that we have done, my apprehensions which have found expression in paragraph 11 of our minute of dissent have not been removed, I am here to support the clause moved by my friend Mr. Ismail. It is one of the anomalies of nature that sometimes we do things which we feel are not absolutely right, but the justification is found in the consciousness that in this world absolute right is so difficult to come across. Pure unmixed good is so difficult to find, and whatever we do is after all nothing but a compromise. In this way if we look at the ways of human life, if we analyse our acts, if we scrutinize what we have done and what we have omitted to do, we find that there is much which could well have been left undone and yet there may have been some evil on account of that; much that could have been done and yet there might have been some good out of it. It is difficult, as I said, to arrive at anything that is absolutely good.

There was one point in clause 40 as it came out of the Select Committee to which we are fundamentally opposed, and that was the omission of the proviso which safeguarded the minimum holding for the tenant. While we believe that it is but right and fair that the zamindar should have enough of land for his own requirements, we also feel that there is a paucity of vocations in our province, that a very large number of men have all to fall back upon land, that this is the only substantial source of maintenance, and if we expropriate the tenant in such a manner as not to leave anything for him, we are practically turning him into a vagabond who can find relief and asylum in a jail when he is challaned under section 109,

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help to the community at large than the rod of the collector or the baton of the policeman. It is, after all, through their good-will that agricultural interests can be promoted and even the larger interests of the country depend on their willing co-operation. We on our part feel that if we are taking a risk today we are doing so out of our regard for those larger interests which for the time being should claim the attention, the regard and even the devotion of every one of us. It is, I think, necessary that the landed interests should, so far as it is possible, be made to realize that the educated classes do not entertain any desires and ambitions that are incompatible with the maintenance of their power and position. In the larger interests of the country the fusion of the educated and the landed classes is absolutely necessary and desirable. It is possible that out of our regard for the interest of the moment we may not be able to see the viewpoint of each other fully or to appreciate it as well as we should; but all the same we must acquire the habit of looking into things in a spirit of understanding and sympathy, and nothing can foster that habit and that spirit better than a little give and take, even with a boldness which is prepared to take large risks at times. It is in that spirit that we have placed ourselves in a mood which enables us to accept this amendment. And I may also assure the honourable members that if we have taken larger risks than prudence would have dictated, it is also because we could never be sure as to the way things might develop any moment. The Government has, to our knowledge, sworn by certain principles of this Bill at a certain hour, but after a short while we have in our experience seen them discarding those principles. The exigencies of the situation seem to have often compelled, provoked, induced, persuaded or cajoled them to accept what they would not have otherwise accepted. Here we felt that we were in a position to do justice to a certain extent: here we were in a position to get something for the tenants, with the goodwill, with the complete agreement of our zamindar friends, and there were certain things which were in our own minds that could not possibly be obtained from the Government, for there the interests of the Government were probably antagonistic both to the zamindars as well as to the tenants. So when we felt that there were some things which we could so secure and we also felt that the Government stands more by expediency than by principle, when we felt that the Government cares for a thing only so long as it thinks it cannot but care for it, and that when the stage is reached, when it finds that it is hazardous to stick to it that the Government does kick it off, we thought that it behoves us as practical men to take stock of the situation, to benefit by our experiences and to do something which would bring us closer, would advance the cause of the country in larger matters and would lead to the welfare of those on whose welfare depends our own welfare.

Question, that after the words "or fixed-rate tenant" in the modification proposed, the words "for the purpose of farming on improved lines and of the holding of any tenant other than a permanent tenure-holder or a fixed-rate tenant or occupancy tenant" be inserted, put and agreed to.

Pandit Nanak Chand: In sub-clause (1) for the word "shall" the word "may" be substituted.

Hon'ble the President : The word "shall" occurs both in the amendment and in the original clause. The honourable member had better move it as an amendment to the amendment of Khan Bahadur Mr. Muhammad Ismail.

Khan Bahadur Shaikh Masud-uz-Zaman : Is the amendment of Khan Bahadur Mr. Muhammad Ismail before the House? May I move a consequential amendment?

Hon'ble the President : Order, order.

Pandit Nanak Chand : I move that in the amendment of my honourable friend Mr. Ismail the word "may" be substituted for "shall."

Hon'ble the President : (To Pandit Nanak Chand). You may move all your amendments together. I will put them together. That would save much time.

Pandit Nanak Chand : I move that the words "or occupancy tenant" be inserted after the words "fixed-rate tenant" in the amendment of Mr. Ismail in line 8. The amendment of my honourable friend runs as follows :—

"order the acquisition of the holding of any tenant other than a permanent tenure-holder or fixed-rate tenant."

After this I want the words "or occupancy tenant" to be inserted.

Hon'ble the President : Was any notice of this amendment given?

Pandit Nanak Chand : I did not know that the honourable mover of the amendment would make this modification in his amendment. That modification was moved without notice to which I had objected.

Hon'ble the President : All right.

Pandit Nanak Chand : I move my third amendment that between the words "landlord" and "not being" the following be inserted in clause 40 (1):—"within two years from the date when this Act comes into force."

I next move my fourth amendment that the following sub-clause be re-inserted after 40 (1):—

"(2) No acquisition under this section except for the purposes mentioned in sub-clause (1) (a), (b), (c) and (d) shall be ordered unless the landholder proves that (i) land is required by him for the purpose specified, (ii) land applied for is suitable for the purpose specified."

In sub-clause (4) of Khan Bahadur Mr. Muhammad Ismail's amendment I move my fifth amendment that for the words "in the case of tenants with a right of occupancy. . . . advantages" substitute "not less than six and not more than twelve times in the case of tenants with a right of occupancy and not less than four and not more than six times in the case of statutory tenants in sub-section (3) (b) or (4) of section 59, and shall be in addition to the amount of compensation, if any, due for improvements."

Hon'ble the President : The honourable member perhaps means that this sub-clause should read as follows :—

"The amount of compensation for dispossession shall be not less than six and not more than twelve times in the case of tenants with a right of occupancy and not less than four and not more than six times in the case

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of statutory tenants the annual rental value of the land acquired at the rates prescribed for statutory tenants in sub-section (3) (b) or (4) of section 59, and shall be in addition to the amount of compensation, if any, due for improvements."

Is that right?

Pandit Nanak Chand : Yes, Sir. In line 6 of sub-clause (6) between the words "for" and "farming" I move that the words "large-scale" be inserted.

I move my seventh amendment that in sub-clause (6) for the words "the court shall award monetary . . . land given in exchange" the following words be substituted :—"the court shall award land of equal value which forms part of a holding of a statutory tenant in the same village, and if no such land is available in that village, in another village after acquiring it on payment of compensation, unless the tenant with a right of occupancy consents to accept monetary compensation."

Then, Sir, in sub-clause (7) I want to move my eighth amendment, that in proviso (a) the words "or occupancy" in line three and "occupancy and" in line six be deleted; my ninth amendment that before the word "farming" in line eight the words "large-scale" be inserted; my tenth amendment that in proviso (b) in line 2 the words "or is used for any other purpose" be inserted, and my last amendment that in line 9 for the words "been admitted by the . . . his right under this proviso" the words "received land in exchange" be substituted.

Hon'ble the President : Honourable members, I hope, will follow the series of amendments proposed by Pandit Nanak Chand. They will find all these amendments on the list—Nos. 53, 54, 55, 56, and 58. They are all on the list except the one moved by him whereby he wants to exclude the land of occupancy tenants also from acquisition for the purpose of farming on improved lines. Will the honourable member explain the object of his amendments?

Pandit Nanak Chand : With regard to my first amendment, whereby I propose to substitute "may" for "shall," I want to submit that this is a very serious change which, as has already been pointed out by the Hon'ble the Finance Member, makes the position of the statutory tenants extremely insecure and opens the door for considerable pressure from the zamindar, which will be a very real menace. This substitution of "may" for "shall" will not mean that the zamindar will not be able to get land for his genuine purposes specified in sub-clause (b) of clause (1), i.e., for his own cultivation. The application will have to be considered by a very responsible officer of the position of a collector, and if he is satisfied he will order the acquisition of the land for the use of the zamindar. But if it is made imperative for the collector to order the acquisition, on a mere application by a zamindar, as is now proposed in the amendment of Mr. Ismail, and if the collector is given no discretion and the safeguard which provided the condition in the original Bill before it was referred to the Select Committee, I mean the phrase "if he is satisfied" is removed, then it will work very hard on statutory tenants.

Coming to my second amendment, whereby I introduce the words "occupancy tenants" after the modification made by my honourable friend

Khan Bahadur Mr. Muhammad Ismail. The draft of the clause as it appeared on the paper in the name of my friend Khan Bahadur Mr. Muhammad Ismail led me to think that occupancy tenants were excluded from the operation of sub-clause (1); but when he introduced this modification, the occupancy tenant who had been excluded from sub-clause (1) was included here for the purpose of acquisition of his lands. By this modification which my friend has introduced it is provided for the zamindar to acquire the land of an occupancy tenant as well as of a statutory tenant. The clause as it appeared on the agenda paper showed that for purposes of clause (b) the occupancy tenant was specifically excluded, and acquisition under clause (b) was considered so important by the zamindars as to make acquisition for the same obligatory for the collector on the mere application. I had understood that the occupancy tenant was also to be excluded for purposes of acquisition for other less important objects where they allowed certain amount of discretion to the collector. Now the effect of the amendment of my friend is that the occupancy tenants' position will become insecure when it is compared with their present position. At present the zamindar cannot acquire land in the holding of an occupancy tenant for any purpose on any ground and on any terms whatsoever, but here the effect of this provision will be that a zamindar will be able to acquire land of an occupancy tenant for a variety of objects, including farming on improved lines. I think this is a serious departure, which curtails the right of occupancy tenants. By this amendment I propose to ensure that his rights will not be curtailed. I am not sure, Sir, whether this modification which was introduced this morning by my friend the mover was part of the understanding which was arrived at between the zamindar party on the one hand and my friends the Swarajists on the other. If that was part of the understanding, I have not much to say about it, as I know that my appeal is a cry in the wilderness; except that I am sorry that the zamindars could not see their way out of their generosity to let the rights of occupancy tenants remain intact and that my Swarajist friends have yielded on a point on which they ought to have stood firm.

Now, Sir, I come to my third amendment whereby I seek to insert the words "within two years from the date when this Act comes into force." The object of this provision is that the exercise of this power of acquisition which is proposed to be given to the landholders should be limited to two years from the commencement of this Act. My object in moving this amendment is (it has already been pointed out that this section is open to serious mischief) to limit the period of the operation of this mischievous section. When the Oudh Rent Bill was under discussion, it was pointed out that section 30A will prove a source of serious mischief, and that it was liable to be seriously abused. I will not take the time of the Council unnecessarily by quoting the opinions of almost all the deputy commissioners in Oudh from year to year which are incorporated in the Revenue Administration reports published in the years 1923, 1924 and 1925. Extracts have already been quoted by my honourable friend the leader of the Swaraj party in his note of dissent to the report of the Select Committee. An extract was also quoted by the Hon'ble the Finance Member in connexion with this very amendment which is under discussion. Now, therefore, when we are fully aware of the fact that a similar provision in the Oudh Rent Act has been continuously abused by a considerable number of the zamindars, if not by all, and when we have got the almost

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unanimous opinion of the deputy commissioners based on their experience that section 30A has not been used for the purpose for which it was devised, but is sought to be used as an engine of oppression, I consider that it is necessary that this mischievous section should not be allowed to operate beyond two years. If the zamindars are anxious to take up some land, I think all these cases could be brought forward within two years, and then this section, which is full of mischievous possibilities, could automatically come to an end.

Coming to my fourth amendment, whereby I propose to restore sub-clause (2), which has been taken out by the Select Committee; that clause provides that no acquisition under this section, except for purposes mentioned in sub-sections (a), (b), (c) and (d), shall be ordered unless the landlord proves that the land is required for the purpose specified; and secondly, that the land applied for is suitable for the purpose specified. I propose that this sub-clause should be restored. I consider it to be an essential provision for the acquisition of land by the zamindars. I think that the two conditions laid down in this sub-clause ought to be satisfied before any acquisition of land is ordered. If this clause is not restored it will act prejudicially against both occupancy and statutory tenants as the zamindar will be absolved from the necessity of proving that the land is required for the purpose specified; and secondly, that the land applied for is suitable for the purpose specified even in cases coming under clauses (40) (1) (e) (f) (g) (h) (i) (j) (k) and (l).

Now I come to the fifth amendment. In clause (4) what I propose is that the cost of the compensation for the acquisition of occupancy land shall be not less than six times and not more than twelve times in the case of occupancy tenants, and not less than four times and not more than six times in the case of statutory tenants. I note with gratification that some modifications have been made in the compensation which is proposed to be awarded to the tenants whose lands will be acquired under the compromise that has been effected between the members of the zamindar party and my friend the leader of the Swaraj party. But I maintain, Sir, that occupancy right is a very valuable right which should not be made insecure. I had proposed earlier that the zamindars should agree to allow the statutory tenants who have cultivated land continuously for a period of five years without sub-letting, declared as occupancy tenants on payment of a compensation or premium which should be six times the rent of statutory tenants. I submit that if you consider it to be a fair compensation for the acquisition of land of occupancy holdings that only six times the annual rental should be paid, I proposed a much better and more liberal scale for the accrual of occupancy rights. The amount of compensation that I have proposed is quite fair, as I believe that quite a considerable number of tenants would be only too glad to acquire occupancy rights on identical terms. The amount of compensation proposed both in the Bill as it has emerged from the Select Committee and in the amendment of my friend Mr. Ismail is extremely inadequate, which will jeopardise the fixity of tenure of tenants.

In my sixth amendment I want to insert the words "large-scale" between the words "for" and "farming" in line 2 of sub-clause (6) as proposed by Khan Bahadur Mr. Muhammad Ismail. "Farming on improved lines" may mean intensive farming on a small scale as well as

farming on a large scale, but as the intention of the House is to grant to the landlords the privilege of acquiring land from occupancy tenants only when they want it for farming on improved lines on a large-scale, the insertion of the words is necessary. So that the tenants may not be menaced by the applications of zamindars without their having to show that they want to start large-scale farming.

In the seventh amendment I beg to propose that, if and when the zamindar wants to acquire the land of an occupancy tenant, he should give land of equal value in exchange, which need not be similar to the land exchanged and possessing or possessing similar advantages, but if the zamindar has no such land in his possession then land of equal value which forms part of a holding of a statutory tenant in the same village may be acquired for such an exchange, and if no such land of statutory holdings is available either in that village or in another village, then the land of an occupancy tenant be acquired by the zamindar only when the occupancy tenant concerned consents to accept monetary compensation.

By the eighth amendment I propose to delete the words "or occupancy" in line 3 and the words "occupancy and" in line 6. This is consequential on my previous amendments. After the amendment has been made, the proviso will read:—"Provided (a) that no land belonging to the holding of a statutory tenant cultivating in all four acres or less as a statutory tenant will be acquired nor shall the part of any holding be acquired to such an extent as to reduce the statutory area in his possession to less than four acres." The object of this amendment read with other amendments is to protect the occupancy tenants, and to prevent their land being acquired.

Further, by my ninth amendment I want that in the same proviso before the word "farming" in line 8 the words "large-scale" be inserted. I have already given reasons for this amendment, in connexion with my sixth amendment.

My next amendment seeks to insert the words "or is used for any other purpose" in line 2 of proviso (b). It is possible that a zamindar might acquire land on the ground that he wants it for his own cultivation and then not use it for such purpose or he might acquire it for cultivation on improved lines, but might actually use it for comparatively less important purposes for which it is possible he might not have been allowed to acquire. This amendment will prevent him from putting the land to an object other than the one for which it has been acquired. My last amendment is under proviso (b) or sub-clause (7), line 9. It is provided here—"if within six years from the date of ejection land acquired under sub-section (i) is used for any purpose other than that for which it was acquired or land acquired under sub-clause (1) (a), (b), (c) or (d) is let to another tenant, the dispossessed tenant, if he has not been admitted by the landlord to the occupation of another holding under a written agreement whereby the dispossessed tenant has waived his right under this proviso." I want to provide that if the dispossessed tenant has been given land in exchange, then, and then alone he should not be permitted to re-enter on the land from which he was dispossessed by acquisition proceedings. But in case the dispossessed tenant has been given land under a special agreement having nothing whatever to do with the land to which he has been admitted on payment of a consideration or premium or on a high rent, then he should not be debarred from re-entering

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on the land, acquired from him, as it is quite possible that the dispossessed tenant might be prepared, after he has been dispossessed, to subscribe to any terms. The agreement as between the tenant and the zamindar should not be enforced, because it is possible that the zamindar might enforce this condition in spite of the fact that the tenant might not be willing because of the tenant's anxiety to get land for cultivation.

For these reasons I appeal that my amendments be considered on their merits and not from any prejudiced point of view influenced by the fact that they emanate from me in the interest of the tenants.

If my appeal fails, then the fate of these amendments is doomed as I know I cannot carry any of them when the Government stick to their own position and the zamindars and Swarajists have agreed upon a compromise as embodied in the amendment of Mr. Ismail, which I consider to be detrimental to the interests of the tenants and not likely to bring about either contentment among the tenantry or happy relations between landlords and their tenants.

At this stage the Council adjourned for lunch.

After the recess—

Khan Bahadur Hafiz Hidayat Husain : I want to say a few words regarding the amendment of my honourable friend, Khan Bahadur Mr. Muhammad Ismail. This amendment is the result of the combined deliberations of the Zamindar party and the Swaraj party. This result of the combined deliberations does not show that the zamindars have been selfish or exacting in their demands or that they wanted to extort anything from persons professing to represent the tenantry. On the contrary, the zamindars gave to the tenants as much as they could. I do not think it is right to say, as has been stated by the Hon'ble the Finance Member, that this amendment is moved because the zamindars want to have hold on their tenantry. If that were the case, it would have been our bounden duties not to yield an inch in this particular matter. But the zamindar members realize, as they always do, that in the happiness and contentment of their tenantry lies the prosperity of the zamindars, and this has been their motive in yielding to the tenants as much as they could. Now, Sir, you will see that very effective safeguards have been provided regarding the acquisition of land. For instance, take the case of statutory tenants. They are the creation of law of only yesterday. We gave the non-occupancy tenants the statutory right, because the zamindars wanted them to have fixity of tenure. Now suppose I want to acquire tomorrow the land of a statutory tenant under this section, I shall have to pay the statutory tenant five times the annual rental value of the land, and this is the value of concession the zamindars have given him for no price. I submit that this provision is conducive more to the stability of the tenant than to any aggressive tendency on the part of the zamindar.

Khan Bahadur Mr. Muhammad Ismail : I do not think that we need prolong this debate, because there has been very little opposition to my amendment. I want to say a word or two in answer to the speech of the Hon'ble the Finance Member. It has been said over and over again that no legislation is perfect. The greatest admirer of this Tenancy Bill cannot say that it is a perfect piece of legislation. There are obvious mistakes, there are points which are in an experimental stage, and it will be years after they have been worked that we will find whether they are really for the benefit of

the tenants or the zamindars. It is asserted that conferment of life-tenancy on the tenants is a great boon ; but when the non-occupancy tenant dies and the land is reclaimed by the zamindar, is it certain that no *nazrana* will be exacted? There are zamindars who will take *nazran* and the law makes no provision for that. It is impossible to provide for every thing. It is a wrong impression that in every case where an application for acquisition is made it will be for the purpose of exacting *nazrana*. I regret the Hon'ble the Finance Member thought that this provision had been made chiefly for the purpose of keeping our influence over the tenants and also for the purpose of exacting *nazrana*. We can say with equal force that the Government wants to retain the influence of the collector and therefore objects to the amendment. As the majority is in favour of this amendment, I do not wish to take up the time of the Council any more.

Hon'ble Sir Sam O'Donnell : I agree with the honourable member for Naini Tal that in the affairs of this world compromise is often justifiable and indeed necessary. It is often necessary to concede something to others in order that they may concede something to you. And I have no quarrel with him, because he has accepted a compromise which he thinks to be fair or at any rate the best that he could obtain. I do think, however, that he might have omitted the suggestion that, while he is concerned only with questions of principle, we are concerned only with expediency. I have never in these discussions questioned his motives. He might well have extended the same treatment to us. I think, too, Sir, that he might also have omitted the suggestion that our interests, so far as other clauses are concerned are antagonistic to those of both the landlords and the tenants. I shall have no difficulty as regards those clauses in showing that, whatever decision is taken, it will certainly not affect to any practical extent the revenues of the Government. At the same time, I agree, as I have already said, that compromises may often be desirable and necessary. But, Sir, whenever a great issue is involved, a stage may be reached at which some at least of those concerned feel that compromise is impossible without sacrificing what they regard as essential. And on this issue, so far as we are concerned, that stage has been reached. We should have been very glad indeed if any formula could have been devised which would have met our difficulties. We have to oppose this amendment because we are convinced that the safeguards provided in it are inadequate and ineffective.

It appeared to me that in the speech of the honourable member for Naini Tal I detected in places an unfamiliar and halting note, which I have never noticed in his other speeches to which I have had the privilege to listen. He seemed, however, to suggest that this amendment was preferable to the clause in the Bill because it did reserve a certain minimum area for the tenant. I admit that the reservation of a certain minimum area, as far as it goes, is a good thing, but I cannot for one moment admit that it is an adequate substitute for the condition in the Bill. It might be that under our clause some of the tenants would lose their holding for compensation that might be inadequate. But what is that to the evils which this amendment will entail. I am convinced that the number of tenants who might lose their holding under our clause would be insignificant and that the area effected would be negligible, because I have not a shadow of doubt both on the basis of our experience in Oudh and in view of the ample area of *sir* which the Bill provides, that the number of cases in which the landlords would really need to extend their *khudkasht* would not be large and the number of ejectments necessary in consequence would be quite small. On

[Hon'ble Sir Sam O'Donnell.]

the other hand, this amendment, as I said before, will mean that a vast body of tenants, whose number runs into hundreds of thousands, nay millions, will live under a perpetual menace, and that the security which we have sought to give them will be vitally impaired. It will be open to any landlord—I do not suggest that all landlords will take that course, but, as we know, there are in the Agra Province hundreds of thousands of landlords and many of them are harsh and illiberal zamindars—it will be open to any landlord to hold this threat over the head of his tenant and to compel him to agree to whatever terms he desires to impose.

Hon'ble the President: A comprehensive amendment has been proposed by Khan Bahadur Maulvi Muhammad Ismail to several sub-clauses of clause 40 of the Bill, to which again a number of amendments has been proposed by Pandit Nanak Chand. I shall put each sub-clause one by one and the amendments relating to each.

Question, that the word "may" be substituted for the word "shall" in line 1, put and negatived.

Question, that between the word "landlord" and the words "not being" the following be inserted "within two years from the date when this Act comes into force," put and negatived.

Hon'ble the President: Before I put the amendment of Mr. Muhammad Ismail, honourable members will remember that they carried an amendment of Pandit Govind Ballabh Pant. In that the words "or occupancy tenant" occur. May I suggest to make it more consistent that the words "right of occupancy" be substituted therefor?

Question, that this amendment be made, put and agreed to.

Question, that sub-clause (1) of clause 40 as reported by the committee stand part of the Bill, put and negatived.

The motion of Pandit Nanak Chand that between the words "other than a permanent tenure-holder or fixed-rate tenant" and "for the purpose of farming on improved lines" the words "or an occupancy tenant" be inserted, put and negatived.

The question, that the following sub-clause be inserted there, put and agreed to: "(i) a collector shall, on the application of the landlord, not being a lessee or mortgagee, of a holding other than the holding of a permanent tenure-holder or fixed-rate tenant, or tenant with a right of occupancy, order the acquisition of the holding or part thereof for the purpose specified in sub-clause (b); and, if he is satisfied that reasonable grounds exist, he may order the acquisition of the holding of any tenant other than a permanent tenure-holder or fixed-rate tenant for the purpose of farming on improved lines and of the holding of a tenant other than a permanent tenant-holder, a fixed-rate tenant or a tenant with a right of occupancy for any of the other purposes mentioned below, in the manner herein after provided, namely.—"

The question, that the following sub-clause be re-inserted after 40(1):—

"(2) No acquisition under this section except for the purpose mentioned in sub-section (1) (a) (b), (c), and (d) shall be ordered unless the landlord proves that (i) land is required by him for the purpose specified, (ii) land applied for is suitable for the purpose specified," put and negatived.

The question, that in clause 40(4) the following be substituted "be not less than six and not more than twelve times in the case of tenants with a right of occupancy and not less than four and not more than six times, in the case of statutory tenants" for the words "not exceed—four times," put and negatived.

The question that sub-clause (4) as reported by the Select Committee stand part, put and negatived.

Question put, that the following be inserted there:—

"(4) The amount of compensation for dispossession shall be in the case of tenants with a right of occupancy six times, and in the case of other tenants five times, the annual rental value of the land acquired at the rate paid by statutory tenants for land with similar advantages." Adopted.

The amendment that in sub-clause (6) line 2 between "for" and "farming" insert "large-scale" was put and negatived.

The amendment of Pandit Nanak Chand that in sub-clause (6) for the words "the court shall award monetary . . . land given in exchange" substitute "the court shall award land of equal value which forms part of a holding of a statutory tenant in the same village and if no such land is available in that village, in another village after acquiring it on payment of compensation unless the tenant with a right of occupancy consents to accept monetary compensation" put and negatived.

The question that sub-clause (6) as reported by the Select Committee stand part, was put and negatived.

Question put, that the following be inserted there:—

"(6) Land in which a tenant has a right of occupancy shall not be acquired except for farming on improved lines, and the court shall award the tenant equal land with similar advantages in the same village or with the consent of the tenant in another village, but if such land is not available at all or to a sufficient extent or the tenant does not consent to take it in another village, the court shall award monetary compensation for it in accordance with sub-section (4): the court in awarding compensation shall take into account the letting value of any land given in exchange." Adopted.

Hon'ble the President: The question is that in sub-clause (7) proviso (a), line 3, the words "or occupancy" and in line 6 the words "occupancy and" be deleted.

The motion was put and negatived.

Hon'ble the President: The question is that in proviso (a) to sub-clause (7) before the word "farming" in line eight the words "large-scale" be inserted.

The motion was put and negatived.

Hon'ble the President: The question is that in proviso (b) to sub-clause (7) after the words "specified" the words "or is used for any other purpose" be inserted.

The motion was put and negatived.

Hon'ble the President: The question is that in sub-clause (7) proviso (b), line 9, for the words "been admitted by the . . . his right under this proviso" substitute the words "received land in exchange."

The motion was put and negatived.

Hon'ble the President : The question is that sub-clause (7) as reported by the Select Committee stand part.

The motion was put and negatived.

Hon'ble the President : The question is that for the words so struck out, the following be inserted :—

"(7) The acquisition of part of a holding under this section shall not affect the right of a tenant in the remainder of a holding :

Provided (a) that no land belonging to the holding of a statutory tenant cultivating in all four acres or less as a statutory or occupancy tenant will be acquired nor shall the part of any holding be acquired to such an extent as to reduce the occupancy and statutory area in his possession to less than four acres, except for farming on improved lines, unless the landlord replaces the area to be acquired with other land in the same village or with the consent of the tenant in another village, of such area and quality as the court considers reasonable : provided that where it is necessary to acquire the land of a tenant without leaving for him the minimum area prescribed above, the landlord may apply to the collector for acquisition of such area as may be required to make up the above minimum and the land of such a tenant may be acquired on its being replaced by the area so acquired for him ; and in such a case the tenant whose land is so replaced will get no compensation for the area which he gets in exchange but the same will be paid to the tenant from whom the land given in exchange was acquired, and this acquisition will be made in the course of the same proceeding ;

(b) that if the land acquired under this section is not used for the purpose specified within two years from the date of ejectment, or that, if within six years from the date of ejectment land acquired under sub-section (i) is used for any purpose other than that for which it was acquired, or land acquired under sub-clause (1) (a), (b), (c) or (d) is let to another tenant, the dispossessed tenant, if he has not been admitted by the landlord to the occupation of another holding under a written agreement whereby the dispossessed tenant has waived his right under this proviso, shall be entitled by application to the collector on the expiration of the said period of two years, or as soon as the other tenant is admitted or the land is used for any purpose other than the purpose for which it was acquired, to recover his holding or part thereof acquired at the rate of rent payable at the date of ejectment without repaying the compensation received by him on account of the acquisition of his holding or part thereof."

Amendment agreed to.

Question put, that clause 40, as amended, stand part of the Bill.

The House divided : Ayes, 58 ; Noes, 21.

Ayes.

Raja Muhammad E'jaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Lala Kishan Lal.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksena.
Babu Damodar Das.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.

Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryopal Singh.
Lala Dhakan Lal.
Babu Nemi Suran.
Rao Sahib Kunwar Sardar Singh.
Pandit Jhanni Lal Pando.
Lieutenant Raja Durga Narayan Singh.
Rai Bahadur Pandit Balbhadra Prasad
Tiwari.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsaidh Narayan Anad.
Pandit Yajna Narayan Upadhyay.

Ayes.

Raja Sri Krishna Dutt Dube.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 Raja Indrajit Pratap Bahadur Sahi.
 Bhaya Hanumat Prasad Singh.
 Pandit Govind Ballabh Pant.
 Mr. Mukandi Lal.
 Babu Ram Chandra Sinha.
 Raja Shankar Sahai.
 Dr. Jaikaran Nath Misra.
 Rai Bahadur Thakur Mashal Singh.
 Kunwar Surendra Pratap Sahi.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Maulvi Zahur-ud-din.
 Rao Sahib Abdul Hameed Khan.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid-ur-Rahman Khan.

Khan Bahadur Hafiz Hidayat Hussain.
 Khan Bahadur Shaikh Masud-us-Zaman.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saliyd Muhammad Ashiq Hussain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Munshi Siddiq Ahmad.
 Raja Saliyd Ahmad Ali Khan Alvi.
 Khan Bahadur Chaudhri Muhammad Raahid-ud-din Ashraf.
 Shaikh Abdus Samad Ansari.
 Rai Bahadur Lala Mathura Prasad Mehrotra.
 Raja Shambhu Dayal.
 Lieutenant Raja Shaikh Imtiaz Rasool Khan.
 Raja Jagannath Bakhsh Singh.

Noes.

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
 Mr. G. B. Lambert.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Elliott.
 Mr. P. H. Tillard.
 Mr. H. A. Lane.
 Mr. R. L. Yorke.
 Mr. R. Burn.

Mr. A. W. Pim.
 Mr. B. J. K. Hallows.
 Mr. E. L. Norton.
 Mr. H. G. Billson.
 Mr. R. J. S. Dodd.
 Colonel A. W. R. Cochrane.
 Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenröder.
 Mr. H. David.
 Mr. K. M. Souter.
 Mr. Tracey Gavin Jones.

CLAUSE 41.

41. (1) A collector *shall*, if he is satisfied that reasonable grounds exist, on the application of a *permanent tenure-holder or fixed-rate tenant*, order the acquisition of the holding or part thereof of a statutory tenant who holds from such *permanent tenure-holder or fixed-rate tenant*, if the *permanent tenure-holder or fixed-rate tenant* applies for the land for *any of the purposes mentioned in section 40(1)*, on such terms as may be agreed upon between the parties or, failing such agreement, on payment of such compensation as the tenant may be entitled to; the collector shall thereupon order the ejectment of the statutory tenant from the holding or part thereof acquired.

(2) The amount of compensation for dispossession shall not exceed four times the annual rental value of the land acquired at the rates prescribed for statutory tenants in sub-section (3) (b) or (4) of section 59, and shall be in addition to the amount of compensation, if any, due for improvements.

(3) The tenant shall be entitled to a reduction of rent proportionate to the rental value of the part of his holding acquired, and the amount of such reduction shall be determined by the collector.

(4) The acquisition of part of a holding under this section shall not affect the statutory right of the tenant in the remainder of the holding:

Provided (a) that if the land acquired under this section is not used for the purpose specified or is used for any other purpose by the *permanent tenure-holder or fixed-rate tenant* within two years from the date of ejectment, or

[Hon'ble the President.]

(b) that if within six years of the date of ejectment land acquired under this section is let to another tenant, the dispossessed statutory tenant, if he has not been admitted by the *permanent tenure-holder or fixed-rate tenant* to the occupation of another holding *under any agreement whereby the dispossessed statutory tenant has waived his rights under this proviso*, shall be entitled by application to the collector on the expiration of the said period of two years, or in the case provided for in (a) as soon as the other tenant is admitted *or the land is used for any purpose other than the purpose for which it was acquired*, to recover his holding or part thereof acquired, at the rate of rent payable at the date of ejectment on the condition of repayment to the *permanent tenure-holder, or fixed-rate tenant* of the amount of compensation received by him on account of the acquisition of his holding or part thereof, less such sum as the court may determine on account of compensation for dispossession at a rate not exceeding the annual rent payable on the holding or part thereof acquired for each year of the period of dispossession.

Hon'ble Sir Sam O'Donnell: I have a consequential amendment to move as regards this clause, namely, that the words "or fixed-rate tenant" be deleted wherever they occur. It has been decided that the tenants of fixed-rate tenants shall not become statutory tenants but shall remain as sub-tenants. Therefore there is no necessity to make any provision for the acquisition of land by fixed-rate tenants.

Question, that the words "or fixed-rate tenant" stand part, put and negatived.

CLAUSE 41 (2),

Mr. Mukandi Lal: I beg to move that the word "five" be substituted for "four." I will not inflict any speech on the House. I simply submit that we have already accepted this amendment in clause 40 and it is practically a consequential amendment.

Question, that the word "four" stand part, put and negatived.

Question, that the word "five" be inserted, put and agreed to.

Pandit Govind Ballabh Pant: I want to move one other consequential amendment in the sub-clause (2). This sub-clause runs as follows :—

"The amount of compensation for dispossession shall not exceed five (we have just substituted "five" for "four") times the annual rental value of the land acquired at the rates prescribed for statutory tenants in sub-section (3) (b) or (4) of section 59, and shall be in addition to the amount of compensation, if any, due for improvements."

In the amended sub-clause in clause 40 instead of the words "at the rates prescribed for statutory tenants in sub-section (3) (b) or (4) of section 59" we have the words "at the rate paid by statutory tenants for land with similar advantages." I propose that the words "prescribed for statutory tenants in sub-section (3) (b) or (4) of section 59" be replaced by the words "paid by statutory tenants for land with similar advantages."

Hon'ble Sir Sam O'Donnell: I think, Sir, that this amendment should come after we have discussed the question of roster year.

Question, that the words "prescribed, for statutory tenants in sub-section (3) (b) or (4) of section 59" stand part of sub-clause (2), put and negatived.

The motion was put and negatived.

Question, that the words "paid by statutory tenants for land with similar advantages" be inserted, put and agreed to.

Question, that clause 41, as amended, stand part of the Bill, put and agreed to.

NEW CLAUSE 42.

Rai Sahib Lala Jagdish Prasad: I move that the following be inserted as clause 42.

Babu Nemi Saran: I want to know whether this is not the practice that when we want to insert a certain clause it should be introduced when all the clauses have been finished?

Hon'ble the President: I know that that is the practice in the House of Commons, but I think we have been following the present practice in this legislature and as it fits in here we might take it up here.

Rai Sahib Lala Jagdish Prasad: I move that the following be inserted as clause 42:—

"42. (1) A landlord may, for the purpose of securing greater compactness in his cultivatory holding, apply to the collector to acquire for him the holding or part thereof of a tenant other than a fixed-rate tenant.

(2) A tenant may for the purpose of securing greater compactness in his holding apply to the collector to acquire for him the holding or part thereof of another tenant other than a fixed-rate tenant.

(3) The land applied for must in all cases be under the same proprietorship as the holding for the compactness of which it is sought to be acquired.

(4) The collector upon receiving an application under sub-section (1) or (2) which does not contravene the provisions of sub-section (3) may, if he is satisfied that reasonable grounds exist, order the acquisition of such part of the land applied for as he thinks proper, and shall order the ejectment of the person in possession on such terms as may be agreed upon between the parties or, failing such agreement, on awarding compensation for dispossession, in accordance with sub-sections (6) and (7). Such compensation shall, in all cases, be in addition to the amount of compensation, if any, due for improvements.

(5) No land shall be acquired under this section if its acquisition would decrease the compactness of the holding from which it would be taken.

(6) If land of a tenant is acquired under this section for a proprietor, the collector shall give in exchange therefor to the tenant, so far as possible, land of the same proprietor of equal value and with similar advantages, or, if such land is not available, he shall award compensation on the scale and up to the maxima laid down in sub-sections (4) and (6) of section 40 and shall also, if part only of a holding of a tenant has been

[Rai Sahib Lala Jagdish Prasad.]

acquired, determine the rent of the remainder in accordance with the provisions of sub-section (5) of section 40.

(7) If a holding or part thereof of a tenant is acquired for a tenant, compensation for dispossession shall be awarded in accordance with the provisions of sub-section (4) of section 40. The collector shall also apply, where necessary, the provisions of sub-section (5) of section 40. The tenant put in possession shall be a statutory tenant of the land acquired and shall be liable to pay rent at the rate prescribed in sub-section (3) (b) or (4) of section 59."

Sir, I do not think I need dwell at length on the desirability of securing compactness or consolidation of holdings. I believe every honourable member of this House will agree that the consolidation of holdings is desirable for the development of agriculture. The original Bill embodied a clause of this nature, but it was deleted by the Select Committee. As soon as I went home and the report of the Select Committee was published a number of zamindars and tenants of my constituency came to me and expressed their view that clause 42 of the original Bill was a very important clause and ought to be restored. In fact, they said that that was the only clause in this Bill which was in the interests of the tenants and in the interests of agricultural development. We know, that at present the holdings, at least in the province of Agra—I do not know much of Oudh—are scattered; and if a tenant has got a holding say, to the east of the village and another to the west and a third to the north of the village, then he has to go about taking his ploughs and bullocks from one holding to another; it takes up his time, and his energy; and then in order to protect the crops when they mature he has to appoint two or three men to keep a watch over them. Thus he has to waste not only his time and energy, but his money also. On the other hand, if he has got his holdings in a consolidated form he will have to spend less time because he will not have to go from one holding to another; he will have to spend less energy, as he will not have to walk from one holding to the other; and will have to spend less money, because he can have only one man to keep a watch over the crops when they mature.

The 1924 Committee, Sir, considered this question of consolidation of holdings, and with the exception of Mr. Burn and Mr. Alexander the committee was of opinion that a beginning should be made at once in this respect, if the whole matter was not to be delayed indefinitely, and that a clause allowing acquisition for the purpose of compactness would be helpful as allowing opportunities of a practical demonstration of the advantages of consolidation, and could not be harmful or liable to abuse, as its working would be controlled by the collector, and satisfactory safeguards would be provided in it. Mr. Burn was of opinion that the time was not ripe for a step which introduced any measure of compulsion in the matter and that if the question was to be taken up at all, it was a matter for a special Act and not for a section in a Tenancy Act. Of course, Mr. Burn, being an officer of great experience in revenue matters his views are deserving of consideration and respect; but, I may say that Sir Selwyn Fremantle was an officer of no less experience and he was in favour of compactness of holdings and in favour of such a clause being provided in the Bill. Mr. Burn thinks that no compulsion should be introduced in the matter. But I do not understand, Sir, where the question of compulsion comes in here. The collector will control the working of this provision and in the first instance it will rest with the tenants.

themselves to come to a compromise between them. If they do not come to a compromise, then of course they can come to the court and the collector will first of all satisfy himself as to how far the request of the applicant is reasonable. On the other hand, if we were to wait for an enactment for the consolidation of holdings I am afraid we may have to wait, if not for ever, at least for a long time to come. Now that the Agra Tenancy Bill is on the anvil I believe it would be in the fitness of things if we insert in it a clause of this nature. It is only an enabling provision and there is no measure of compulsion in it. I hope therefore that the House will agree with me and accept my amendment.

At this stage the Deputy President took the Chair.

Pandit Nanak Chand : I want to move my amendment No. 60 as an amendment to the amendment moved by my friend Rai Sahib Lala Jagdish Prasad. I move that the following be substituted for his amendment :—

“ 42. (1) A landlord in the case of there being a single proprietor, or majority of landlords or landlords paying the major portion of revenue, or majority of tenants, or tenants cultivating the major portion of cultivated area of a village or compact mahal or any of them together may apply to the collector to take steps for the purpose of securing greater compactness of cultivatory holdings in the said village or mahal.

“(2) The collector shall after giving notice to all tenants and landlords who have not joined in the application and hearing objections, if any, proceed in accordance with rules framed by the local Government in this behalf.

“(3) On exchange the tenants and the landlords, shall have the same rights in the land received in exchange as they had in the land given in exchange.”

I need not go into the question of the evil of sub-division of holdings. It is a patent fact and it is admitted on all hands. The evils are well known and a reference to them has already been made by my friend Rai Sahib Lala Jagdish Prasad while he was moving his amendment. Why I have moved my amendment I will just explain. As I pointed out when the Bill was referred to the Select Committee, if individual tenants and individual landlords were permitted by law to apply for the acquisition of each other's land in the interest of securing greater compactness for their respective holdings, the result will be that there will be any number of applications from every village and from every mahal to secure this object. Every tenant will be applying in the interests of his own holding for the acquisition of another tenant's land and so will be the case with the landlords; and one does not know as to how long this litigation may go on. A few tenants might apply this year and other tenants might apply next year and so on. The litigation will be numerous and protracted over a very long period. What I propose to substitute in its place is not an elaborate provision as to how this should be done. I propose that where the landlord who happens to be a single proprietor if he is enlightened enough, if he realizes the true interests of his tenantry and of himself if he can first of all try to persuade his tenants to agree to it and to join him in such an application. If they do not join him, if a majority or any portion do not join him, he can under the amendment that I have proposed apply to the collector

[Pandit Nanak Chand.]

for these proceedings. In case there are several proprietors and the majority of them decide that it is in the interests of their zamindari or in the interests of their tenants they could go and apply for these proceedings. In case such zamindars happen to be paying less than half the revenue for that village or mahal and the other zamindars who pay more than half the revenue do not agree, the former will be able to initiate the proceedings. In case there are one or two proprietors who feel the necessity of it and such proprietors pay a major portion of the revenue in that village or mahal and the other proprietors who form a majority and who pay less than half of the revenue are not agreeable to that proposal, then in that case such proprietors paying the major portion of the revenue can move the collector for proceedings under this clause. Similarly, in a case where the zamindar is not prepared to take this step and where the tenants feel that it will serve their true interests to get their holdings made as compact as it is possible in the circumstances of the particular village or mahal, then either the majority of these tenants, if not all, or the tenants cultivating the major portion of the cultivated land in that particular mahal or village will move the collector to take steps for securing compactness of holdings.

I have proposed in the second sub-clause that when such an application is received by the collector either on behalf of a landlord or landlords or on behalf of the tenants or on behalf of the landlord and his tenants or on behalf of the landlords and their tenants, then the collector shall issue a notice to all the other tenants and landlords if any who have not joined in this application. He shall then consider the objections which may be filed by such landlords and tenants. If he finds that the objections are valid he will take them into consideration when disposing of the application. If he finds that the objections are not very weighty and there is good case made out by the applicants for the objects stated in their application, then the collector shall proceed according to this sub-clause in accordance with the rules framed by the local Government in this behalf. I have purposely given this power to the Government because I am conscious of the fact that if we try to lay down the procedure in detail here as a part of this legislation it is quite possible that we may fail to provide for all the difficulties with which this question is attended. In case this amendment is accepted and the Council accepts the principle that the Government should make these rules, then the Government will in due course publish these rules for objections and criticisms. If at that time the rules are found to be defective the public could criticize those rules and the rules can be amended accordingly. If the Legislative Council feels that the rules require to be changed, then it will be open to any member to move it on the floor of the House, and the rules thus amended in the light of public criticism will be as good for all intents and purposes as the provisions in this Bill on the subject. I am aware of the fact that some of the honourable members like my honourable friend, Mr. Burn, are opposed to a provision of this sort being incorporated in the Bill, but, as has already been pointed out, the drafting committee of 1924, which was presided over by no less a person than Sir Selwyn Fremantle, agreed that at least a beginning should be made in this Bill. It will probably be averred that the problem bristles with difficulties, but if it is conceded that the point involved is a pressing one, the difficulties

deserve to be overcome, instead of the whole question being shelved without attempting a solution.

Mr. R. Burn: In rising to oppose both the amendment and the amending motion of the honourable Pandit, I should like to say at the outset that it is not because the Government in any way wish to discourage attempts at consolidation. The honourable member for Muzaffarnagar has told us that a number of zamindars and tenants have come to him and said that they regretted the omission of a clause which was inserted by the drafting committee. I am very glad to hear of it, and I hope he will pass on the names of those villages to the co-operative department in these provinces, which is at present attempting to make a start in this very important movement.

The question of consolidation, to my knowledge, has been before the Government for the last fifteen years. When we first began to inquire into it, the most striking thing which impressed itself on all of us was that the benefits of consolidation are by no means unanimously accepted nor are they even universally certain. Take a typical village in the centre of the provinces. What do you get there? A portion of the village site is *gauban*, some is *banjar*, while in the rest there grows rice. The immense difficulty in consolidation lies in trying to give to each tenant a consolidated holding which will combine specimens of all the three classes of soil. You have again the difficulty of watch and ward. In order to consolidate the holding to save the cultivator, as the honourable mover has said, the labour of walking to and from his holding, you want to give him a house either on the holding or near it. That raises large questions again of water-supply or wells. There is also the question of getting his labour together. Labourers in the present conditions of these provinces work for a number of cultivators at odd times. If you break up the main village site and if you try to have the cultivators living near their consolidated holdings, you still do not meet the difficulty of getting the labourers. However, I need not labour that part of the question any further.

There are other and much stronger objections to the proposal that in the Tenancy Bill we should have compulsory power to move in this direction. The honourable member referred to the fact that in the drafting committee I opposed this proposal, and he has set up against me the authority of my late colleague, Sir Selwyn Fremantle. I am willing to give up my own authority if he will also give up his, and I will refer the Council to the authority of somebody, who at the present time stands pre-eminent in India in regard to this question, viz., the authority of Mr. Calvert, who was lately Registrar of Co-operative Societies in the Punjab. I think no member of the Council will deny that the Punjab has made very real progress in this direction, and the brain responsible for it is that of Mr. Calvert. Last year I received a letter from him—it was in fact a copy of a letter written to somebody else—dealing with my remarks in the drafting committee. Mr. Calvert in that letter explains what happened in the Punjab. He says that ever since this question was moved in India (I think Mr. Moreland, who was the Director of Agriculture in these provinces, was the first writer on this branch of Indian economics) Punjab officials have been trying to take it up. Settlement officers had made attempts, and they had always failed. An attempt at official compulsion was made in connexion with new channels for canals. As honourable members are aware, in the colonies where the canals are irrigating, land

[Mr. R. Burn.]

which has never been cultivated before was laid out in rectangles so that the irrigation channels ran in straight lines, and loss of water was avoided and irrigation was facilitated. It occurred to Punjab officials that when they opened a new branch on a canal, they might obtain economy of water by insisting that the holdings should have their boundaries made into straight lines. There was so much opposition in the villages that it had to be abandoned. Mr. Calvert then took up the problem himself to be worked out by officers of the co-operative department. He says that it took him a whole year before he could convince his subordinates that anything could be done, and when they arrived at that state, it took them a year before they could get even an approach to success. In this province, ever since Mr. Moreland's note was written, we have been making attempts both officially and through non-officials. Since I have had charge of the court of wards I have encouraged special managers to make attempts of this sort. Mr. Dunne, the special manager in the Sitapur district who is one of the most successful managers that we have, took up a small village. He worked at that village for a year. He had to make three entirely different redistributions before he got something which the villagers accepted. I find from the last report of the court of wards that progress in 1924-25 has again been poor. Consolidation was effected in only one village of each of the Ajodhia and Rampura estates and work in two more villages is in hand in each of them. In the Dera estate it was carried out in a portion of village. In the very large Balrampur estate we were not able to obtain success in a single village, though experimental work is still going on. In Moradabad and Ghazipur districts tenants were entirely opposed to the scheme. In Dehra Dun and Bulandshahr where experiments were to be undertaken no action could be taken.

Mr. Calvert, after telling us what he has done, goes on to say: "I do not for one moment believe that a collector will be able to do much good under the proposed provisions in your Tenancy Bill (i.e. the Draft Bill of 1924)." The fact of the matter is that in these provinces we have not got at present the staff that can do this work, and it is quite hopeless to expect that the average sub-divisional officer before whom these cases would come could make anything of the experiment. The Hon'ble Pandit has suggested that we can have rules. Sir, I am reminded of a young officer who had been trained in England and was sent to inspect a college in these provinces. It was the first time he had ever been to an Indian college. He was fresh from England where colleges are provided with massive walls and gateways with trustworthy gate-keepers. The first question which he asked when he saw the college was: "How do you prevent students from getting out at night." The answer was: "We have a rule against it." I am afraid rules for the consolidation of holdings would have just the same effect. The Government is in the position of Socrates who said: "I am an ignorant man, but I have this advantage that I know my own ignorance." What we have to do is to educate and to procure a trained staff. There is plenty of room for experiments. I hope the Hon'ble Rai Sahib will himself, when he goes down from here, start at once an experiment either in his own estate or among the people who came to him praying that these provisions might be restored. As Mr. Calvert says, there are no short cuts in economic matters. What we have to do is not necessarily to apply compulsion at the start, but to educate and educate till we can get people to see the advantages. The co-operative department of

these provinces is at present carrying on experiments in the Saharanpur district. On the court of wards I have insisted that efforts should go on. There are individual collectors in the provinces who are still making the experiments. All their experience will be useful, but until we have a very much large experience and a much stronger staff of trained men with which to carry out this measure, I think members of the Council will agree that it is premature to provide for any compulsion.

Rai Bahadur Lala Mathura Prasad Mehrotra : I rise to support the amendment of Rai Sahib Lala Jagdish Prasad. I agree with Mr. Burn when he says that the co-operative department can do a lot for the consolidation of holdings. But there are difficulties in its way. It gets Rs. 500 a year for this important work. Do you expect any solid or substantial work from the department by paying such an insignificant sum? I am aware, Sir, as a member of the co-operative committee, that this question was brought before the committee when we were told that the Government had appointed Pandit Shiam Behari Misra for the purpose. He has long since submitted his report and I think it is in favour of this movement. In spite of all this I am sorry to submit that no steps have been taken. The co-operative department has, no doubt, taken an initiative in Saharanpur and perhaps in Dehra Dun district, and I learn from the department that experiments have begun with success. I am of opinion that it is very essential, both in the interests of landlords and tenants as well as for the development of agriculture, and should be taken up in right earnest and be given as much scope as possible. One or two instances have already been given by the honourable mover, in which he has pointed out the difficulties of tenants having three or four plots situated at a distance from one another. With this state of affairs, how can he improve his entire holding? He has to go from one place to another. If he has got his holdings at one place only he can dig a *pacca* well and thence can water his fields economically and cheaply. He can also watch them and plough them at the same time. I am aware, Sir, that there is no provision in the Oudh Rent Amendment Act for the consolidation of holdings, but the circumstances are quite different. It is not so difficult in the case of statutory tenants to do without any such provision, as in the case of occupancy tenants. In the Agra province the number of occupancy tenants is quite appreciable—I think more than 76 per cent., so it is very necessary in the Agra Tenancy Bill to have this provision. Mr. Burn has pointed out that it is very difficult in the case of bangar and rice lands to get them exchanged. I think it is the lookout of the tenants and the collector to satisfy themselves. But if they exchange to their own satisfaction, nothing should stand in their way. Mr. Burn has also said that the question of water-supply and labour will be very difficult. I think the case will be just the reverse. The question of water supply and labour will be easier in the case of consolidation of holdings.

As regards the opinion of Mr. Calvert I cannot say anything but this, that I had the honour of a talk with him in the Registrars' Co-operative Conference at Bombay and we, the members of the United Provinces, discussed with him upon three points : (a) provincial co-operative banks, (b) land mortgage banks, and (c) consolidation of holdings. He said that all these matters were difficult to begin with, but the United Provinces should make a start. To me the start that our provinces have made is not such as it ought to be. I, therefore, think that this provision should be inserted in the Agra Tenancy Act.

Dr. Shafa'at Ahmad Khan : I am in complete sympathy with the amendment of Rai Sahib Lala Jagdish Prasad, but I fear several practical difficulties in the way. I think nobody will deny that, so far as consolidation is concerned, nothing but benefit will come out of it, and that especially in these provinces we need to consolidate our holdings as much as possible. In 1925, when the Agra Tenancy Committee had finished its report, I sent in a letter a copy of section 32(e) of the Bill to Mr. Calvert and he replied in a letter, which was quoted by Mr. Burn, that the principle is essentially sound, but that the intervention of the collector will produce a good many difficulties. I agree with him, and I think that if this proviso is retained, if the collector is brought in in all these cases, and if no consolidation can be admitted voluntarily without the intervention of the official, then this proposal is likely to meet with more serious difficulties. As was explained to me by another official, Mr. Strickland, who took the place of Mr. Calvert as Registrar of Co-operative Societies, the work of making the preliminary arrangement will devolve upon the patwari, and the patwari, whatever you may think of him, cannot possibly be expected to do this as efficiently, and, let me add, as honestly, as we demand. For these reasons I do not think that this amendment will be really practicable. I agree with Mr. Burn that we need a separate Act in order that the various interests involved might be reconciled and that a comprehensive enactment be passed, whereby the powers may be vested in the department of co-operative societies. I should like to mention here that without consolidation I do not believe that any progress in Indian agriculture is possible. About two years ago I received a book by a person who had been sent by the Baroda darbar to visit European countries (Norway, Sweden, and Denmark) and who drafted a report on the consolidation of holdings in those countries. At the end of that book there is an appendix, and in that appendix there are various Acts dealing with consolidation. Now, some of the laws lay down that a person who does not consolidate shall be punished, and a number of laws empower the State to impose heavy fines upon all defaulters. References have been made by some speakers to the work done in this province. Now, Sir, I admit that the working of the co-operative department in this province has not by any means tended to develop this movement. I will go further and say that it has paid no attention worth the name to this important point and that the grant of the miserable sum of Rs. 500 a year for the purpose of consolidating land which runs into millions of acres can only be called pitiable.

Mr. Mukandi Lal : That is earnest money.

Dr. Shafa'at Ahmad Khan : I hope it is earnest money. Nor, Sir, has any other department that I know of done anything in this line. In 1924 in connexion with the budget debate I raised this point and I asked the Government what progress, what measures the Government had adopted or were going to adopt in regard to the consolidation of holdings. I was promised by the then Minister of Industries and Agriculture that serious attention would be given to my proposals. The Government published a resolution on the report of Pandit Sham Bihari Misra upon the consolidation of holdings. That resolution I am not going to discuss here. My point is that in the report the measures outlined cannot be called adequate, satisfactory or practicable. I think that if we go on lagging behind other provinces in respect to the consolidation of

holdings, we will find that we will be far behind other provinces so far as agricultural development is concerned.

At this stage a motion was made that the question be now put.

Question, that the question be now put, put and agreed to.

Rai Jagdish Prasad Sahib : I have listened carefully to the arguments advanced by Mr. Burn against my proposal. I have only come to the conclusion that if Government wants something to be done, they can find a way, and if they don't want it to be done, then difficulties crop up. I know there are difficulties in this matter; the question of consolidation of holdings is not free from difficulties; but difficulties are meant to be solved. I would not have cared to press my amendment if I had seen that the Government was going to take some practical steps in the direction of consolidation of holdings. I think the co-operative department has been trying for the consolidation of holdings for some years, but I suppose that it has been able to achieve very little up to this time. Mr. Burn has just said that some special managers of the Court of Wards were successful in bringing about consolidation of holdings in some estates. Well, that shows that the tenants are not entirely opposed to this idea. If efforts are made, the tenants can come to approve of it, if they do not already understand and realize the benefits of the compactness of holdings. Of course, I admit that some kind of propaganda will be helpful in this matter, but my clause, as I said before, is only an enabling provision. If the tenants want and if the collector is satisfied that reasonable grounds exist, then alone will consolidation of holdings be possible. I do not understand that when there is a provision in the proposed clause that "if (the collector) is satisfied that reasonable grounds exist," then alone he will order the acquisition of the land. Why should there be any fear of the section being abused. When the Government depends upon the district officers in all matters of administration, I do not see any reason why they should not depend upon the collector in this matter.

In section 40 Government was so anxious to retain the provision, viz., "if (the collector) is satisfied that reasonable grounds exist," but in this case it is strange that the Government does not consider this provision sufficient against the danger of this section being abused. I should, therefore, leave it to the Council to decide how far my amendment is desirable, and with these words I press it.

Hon'ble Sir Sam O'Donnell : We are, of course, as anxious as anybody to promote the consolidation of holdings so far as is practicable. We agreed to the insertion of a clause in the draft Bill because at the time we thought that it might do some good; we were not very hopeful on the point, but still we thought that this clause, as drafted by the 1924 committee, might at any rate do something to help forward the movement. We have since come to the conclusion that this clause is not suitable. We agree with the select committee that this difficult problem should be left over for separate legislation, or that the consolidation of holdings should be dealt with on different lines. The consolidation of holdings is a difficult, delicate and complicated matter. It cannot be rushed. There is, as Mr. Calvert says, no short cut, and as Mr. Burn has shown Mr. Calvert's authority on the subject is unique. He is definitely of opinion that this clause would not work successfully. Therefore, we are opposed to this amendment. I think that this clause should not be restored, and I am sure that the Council will take the same view.

[Hon'ble Sir Sam O'Donnell.]

Question, that the amendment moved by Pandit Nanak Chand be made put and negatived

Hon'ble the President resumed the Chair.

Question put that the amendment moved by Rai Jagdish Prasad Sahib be made.

The House divided : Ayes, 30 ; Noes, 42.

Ayes.

Raja Bahadur Brij Narayan Rai.
Lala Kishan Lal.
Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Rai Sahib Chaudhri Sheoraj Singh.
Pandit Nanak Chand.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryopal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Lieut Raja Durga Narayan Singh.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.

Rai Bahadur Thakur Masbal Singh.
Kunwar Surendra Pratap Sahi.
Rao Sahib Abdul Hamced Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Shambhu Dayal.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. David.
Babu Khem Chand.
Babu Narayan Prasad Arora.

Babu Sangam Lal.
Babu Mohan Lal Sakseena.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Jhanni Lal Pande.
Raja Narayan Pratap Singh.
Pandit Sri Krishna Dutt Pallwal.
Babu Paridh Narayan Anad.
Pandit Yajna Narayan Upadhyay.
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Maulvi Zahur-ud-din.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Maulvi Fasih-ud-din.
Raja Jagannath Bakhsh Singh.

NEW CLAUSE 42A.

Rai Bahadur Thakur Hanuman Singh : I rise to move that a new clause 42A be added to the Bill. The proposed clause runs as follows :—

"42A. (1) A tenant having agriculture land in a mahal or village and having no house for his residence or cattle or having a house without sufficient accommodation, may apply to the collector to acquire land for building his house thereon. The collector shall, if he is satisfied that reasonable grounds exist, ask the landlord to acquire land for the tenant, and in case of landlord's failure to do so, himself proceed to acquire land for the tenant.

(2) Any tenant or group of tenants, whose houses may have been diluviated by the action of any river, may apply to the collector to acquire

land for building their houses and cattle-sheds. The collector shall, if he is satisfied that reasonable grounds exist, ask the landlord whose tenants they were to acquire land for them under section 40(1)(f), and in case of his failure to do so, he shall himself acquire suitable site for them either in the same mahal or village in which their houses were or in other villages.

(3) All the cost of acquisition of site under sub-sections (1) and (2) will be met by the applicant.

Everybody knows that the population is increasing and the landlords, I am sorry to remark, are very reluctant to extend the village sites. On this account the tenants residing in villages are very often put to very great difficulties in building new houses, as a result of which they have to live in small houses at the cost of their health and other comforts. At the same time cattle-sheds are mostly required by the tenants to stable their cattle near their houses. This is a difficulty which is generally felt. Sympathetic landlords certainly make arrangements and give their tenants land to build their houses on it, but there are certain landlords who are not sympathetic to the needs of these tenants on account of which they are put to constant trouble and suffering. The sub-clause (1) as has been moved by me provides that the collector should first of all ask the landlord to let the needy tenant have land to build his house thereon. In case he refuses to do so, the collector should come to his aid and have land acquired for him. The sub-clause (2) applies to those districts which are subject to alluvion or diluvion or to inundation. The condition of those whose houses are washed away by the action of the river is simply deplorable. They have to live in thatches erected on their holdings, if they have any, or they have to go to their friends and take permission to erect there thatched sheds on their holdings. In this way they pass their life, which is by no means a comfortable one. Sometimes the landlords whose tenants they were before the cutting away of their houses themselves do not possess any land to give to their tenants for building houses thereon, but when they possess such lands they are very reluctant to let them build their houses on such lands. As a result the trouble of such tenants is perpetual and they are very often put to great difficulties. They cannot migrate to other districts or other parts of the district of their residence because they have their holdings in the village or in neighbouring villages. Under the Rent Law they are not allowed to erect their residential houses on their holdings, so their difficulty is very great, and it is but meet and proper for the landlords and for the Government to relieve them of such difficulty. With these remarks I place my amendment before the House and I think the Government as well as the landlord members, taking pity on these suffering tenants, whose number is not one, but thousands and thousands in districts where the land is subject to diluvion, will support my proposal.

Hon'ble Sir Sam O'Donnell: I think, Sir, this is a matter which may safely be left to be settled between tenants and landlords. It is not to the interest of the landlord to refuse tenants land for the erection of buildings or sheds which they require for their use and occupation. If they do so, the result will be that they will lose their tenants. If the tenants have no place to live in, how can they cultivate the holdings? I think the amendment is an unnecessary complication.

Rai Bahadur Thakur Hanuman Singh: I know that the difficulty in the way of the tenants is very great. I have been in Ballia and I know

[Rai Bahadur Thakur Hanuman Singh.]

that thousands of tenants whose houses were washed away long ago, say ten or twelve years before, have not up till now been able to get land to build their houses. The Government may say that I was manager there; why did I not provide the tenants with land? To it my reply is that I had to comply with the rules of the estate which I was then serving, and under those rules it was very difficult for the tenants to get land. Then there was another difficulty in my way which I have just mentioned. It was this, that lands which were suitable for building houses were in the possession of either occupancy tenants or fixed-rate tenants. They were unwilling to part with their lands for any price, and even when they were willing they asked for exorbitant prices, say Rs. 1,500 or Rs. 2,000 per bigha. That was, no doubt, an exorbitant demand, and it was beyond the means of the estate and beyond the means of the tenants who were in need of houses to pay such a high price. Under such circumstances it is very necessary that the proposed provision be made in the Rent Law so that the troubles and sufferings from which these houseless tenants are suffering be mitigated. I hope the Government will change its views and the landlords will be sympathetic. Such cases are not very many everywhere except where the land is subject to the fluvial action of the rivers. I have seen the life of these people in all the seasons of the year. In summer they are exposed to burning heat and in rainy season water flows from underneath their sheds. In winter their troubles are not very great, but even then they cannot be said to be comfortable.

Hon'ble Sir Sam O'Donnell: I gather from what the honourable member has said that the estate which he served was not in his opinion run on very liberal lines. I am sorry to hear that because it is a very large and important estate. The honourable member then went on to say that the position in the estate was such that neither the tenants nor the landlords were able to make arrangements for the houses of the tenants. In that case what is the use of this amendment? This amendment says that the applicant must pay the cost, but the honourable member has just said that neither the tenant nor the landlord were in a position to pay.

Rai Bahadur Thakur Hanuman Singh: Reasonable cost can be paid.

Hon'ble Sir Sam O'Donnell: Why did not the estate give them land at a reasonable cost?

Rai Bahadur Thakur Hanuman Singh: That is a question . . .

Hon'ble the President: The honourable member cannot be allowed to argue.

Hon'ble Sir Sam O'Donnell: May I invite the attention of the honourable member to clause 3(11) (d) which says "(d) the erection of buildings on the holding or in its immediate vicinity, elsewhere than on the village site, required for the convenient or profitable use or occupation of the holding"; under clauses 111 and 114 even the statutory tenant can erect buildings on his holdings. If he is refused permission to do so he can apply to the court. That would serve his purpose just as well as the procedure suggested under this clause, because under this amendment the applicant will have to pay the cost of acquisition. It is just as cheap for him to erect a building in a corner of his holding, and that he can always do under clause 111.

Rai Bahadur Thakur Hanuman Singh: May I say a word? I will not make a speech.

Hon'ble the President: Is it a personal explanation?

Rai Bahadur Thakur Hanuman Singh: No, it is not.

Hon'ble the President: If it is not a personal explanation he cannot be allowed to speak.

Question put, that the following new clause be added:—

"2A. (1) A tenant having agriculture land in a mahal or village and having no house for his residence or cattle or having a house without sufficient accommodation may apply to the collector to acquire land for building his house thereon. The collector shall, if he is satisfied that reasonable grounds exist, ask the landlord to acquire land for the tenant, and in case of landlord's failure to do so, himself proceed to acquire land for the tenant.

(2) Any tenant or group of tenants, whose houses may have been dilapidated by the action of any river, may apply to the collector to acquire land for building their houses and cattle-sheds. The collector shall, if he is satisfied that reasonable grounds exist, ask the landlord whose tenants they were to acquire land for them under section 40(1) (f), and in case of his failure to do so, he shall himself acquire suitable site for them either in the same mahal or village in which their houses were or in other villages.

(3) All the cost of acquisition of site under sub-sections (1) and (2) will be met by the applicant."

The House divided: Ayes, 23; Noes, 51.

Ayes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksona.
Babu Damodar Das.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Ohand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Jhanni Lal Pande.

Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhyaya.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Makundi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Maulvi Zahur-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.

Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Raja Bahadur Brij Narayan Rai.
Lala Kishan Lal.
Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryapal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Raja Narayan Pratap Singh.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.

Noss.

Rai Sahib Babu Dip Narayan Roy.
 Raja Indrajit Pratap Bahadur Sahi.
 Bhaya Hanumat Prasad Singh.
 Kunwar Surendra Pratap Sahi.
 Khan Bahadur Mr. Muhammad Aslam
 Saifi.
 Rao Sahib Abdul Hameed Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid-ur-Rahman
 Khan.
 Khan Bahadur Hafiz Hidayat Hussain.

Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saifyid Muhammad Ashiq
 Husain.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Munshi Siddiq Ahmad.
 Khan Bahadur Obaudhri Muhammad
 Rashid-ud-din Ashraf.
 Shaikh Abdus Samad Ansari.
 Rai Bahadur Lala Mathura Prasad
 Mehrotra.

CLAUSE 43.

Question, that clause 43 stand part of the Bill, put and agreed to.

CLAUSE 44.

44. A person taking or retaining possession of a plot or plots of land without the consent of the landholder and in contravention of the provisions of this Act shall be liable to ejectment on the suit of the landholder and also to pay damages which may extend to four times the annual rental value at the rates applicable to statutory tenants under section 59.

Pandit Govind Ballabh Pant: I move that for the words "applicable to statutory tenants under section 59" the following words be substituted:—
 "paid by statutory tenants for similar land with similar advantages."

We do not know if the final verdict of the Council will be that section 59 should or should not form part of this Bill as there are a number of amendments on the agenda for the omission of that section. I therefore think that this amendment is desirable. Even when this amendment is passed, in case that system is maintained, there will be no difficulty; but in case it is not, then it will be meaningless. So I propose the amendment.

Hon'ble Sir Sam O'Donnell: I hope that the honourable member who has moved this amendment will agree that he had better take up this amendment after we have dealt with the roster year system. If the roster year goes out, then this amendment can be made. There will be no harm if we take up this amendment later on. It is a purely consequential amendment. I hope the honourable member will agree with me.

Question, that the consideration of clause 44 be postponed till the roster year system has been discussed, put and agreed to.

CLAUSE 45.

Question, that clause 45 stand part of the Bill, put and agreed to.

CLAUSE 46.

46. In a suit under section 45 the rent shall be decreed at the rate payable in the previous year, or if no rent was payable in the previous year, at the appropriate rate specified in section 59.

Method of fixing 'rent
 in suit under section 45.

Pandit Govind Ballabh Pant: I move that this too be postponed till we have discussed the roster year system.

Question, that the consideration of clause 46 be postponed till the discussion of the roster year system, put and agreed to.

CLAUSE 47.

47. The rent or rate of rent payable by a tenant shall be presumed to be the rent or rate of rent previously payable by him until a registered agreement, or a decree or order of a court, is proved varying the same.

Rai Bahadur Thakur Hanuman Singh : I move that the following words be inserted between the words "him" and "until":—

"Or any other tenant who would have held the land before him."

I think that my amendment does not require any speech to support it. It makes very easy for the court to decide what rent the landlord can claim when a tenant enters his land without settlement of rent.

Hon'ble Sir Sam O'Donnell : In the first place it is difficult to say what the meaning of this amendment is. At least I for one find it difficult to interpret the words "or any other tenant who *would have held* the land before him." I suppose what the honourable member means is "or any other tenant who *has held* the land before him."

Rai Bahadur Thakur Hanuman Singh : Yes, Sir.

Hon'ble Sir Sam O'Donnell : Apart from that, it seems to me that the amendment is illogical. A former tenant may have held the land under different tenure, may have been privileged tenant or a tenant holding land on excessive rent. The test which the amendment would apply is a haphazard test, which may not be applicable at all to the circumstances of the new tenant. The clause in the Bill says:—"The rent or rate of rent payable by a tenant shall be presumed to be the rent or rate of rent previously payable by him" Why should the other tenant be dragged into the matter at all? The other tenant may have held the land under entirely different circumstances. What the court is concerned with is the rent or rate of rent payable by the actual tenant in question. I am sure if the honourable member will think over this amendment he will see that it is not required.

Rai Bahadur Thakur Hanuman Singh : The section to which I have moved this amendment runs thus:—"The rent or rate of rent payable by a tenant shall be presumed to be the rent or rate of rent previously payable by him until a registered agreement, or a decree or order of a court, is proved varying the same." The section clearly means that when a tenant enters upon a land without having his rent settled with the landlord and if the landlord goes to court to sue the tenant for arrears of rent, then the question arises what rent the landlord can claim. If the tenant has been paying any rent for that land, before his re-entry in that case the court would decree the rent which was payable by that tenant who has been sued by the landlord. In case that tenant never held the land and that land was held by some other tenant, then the court may decide that the rent which was payable by the previous tenant should be payable by the tenant occupying the land. This is the purpose of my amendment.

Hon'ble Sir Sam O'Donnell : The honourable member does not seem to have understood the meaning and intention of clause 47. If he will look at clause 45 he will see that it provides for the cases to which he refers. Clause 45 says:—"Whenever any person has been admitted to the occupation of land, or permitted to retain possession of land, by any

[Hon'ble Sir Sam O'Donnell.]

one having a right to admit or permit him with the intention that a contract of tenancy should thereby be effected, but without any rent being fixed, either he or the person so admitting or permitting him may at any time during the period of his occupation or within three years after the expiry of such period sue to have rent fixed thereon." Clause 47 is intended to meet the case of a landlord who sues a tenant for rent. It says that the court shall in such a suit presume that the rent is that previously payable by the tenant. The case of a man who is admitted to the land without having the rent fixed is dealt with in section 45, and the case of a person who has taken possession of land without the consent of the landlord is dealt with in clause 44.

Rai Bahadur Thakur Hanuman Singh : If the Government does not agree I have no desire to press the amendment.

Amendment by leave withdrawn.

Question that clause 47 stand part of the Bill put and agreed to.

CLAUSE 48.

48. A tenant from whom any sum or produce is exacted by his landholder in excess of the amount recoverable from him as an arrear of rent under this Act, or any other enactment for the time being in force, shall be entitled to recover from the landholder such compensation not exceeding double the amount, or double the value of the produce so exacted, as the court thinks fit to decree, in addition to the amount or value of the produce so exacted.

Pandit Govind Ballabh Pant : I have an amendment to clause 48. It is No. 121 in the old list. If honourable members will read the language of clause 48 they will find that it is likely to give occasion for misunderstanding and even for mischief. The clause runs thus :—"A tenant from whom any sum or produce is exacted by his landholder in excess of the amount recoverable from him as an arrear of rent under this Act, or any other enactment for the time being in force, shall be entitled to recover from the landholder such compensation not exceeding double the amount, or double the value of the produce so exacted, as the court thinks fit to decree, in addition to the amount or value of the produce so exacted." The language is likely to mislead

Pandit Nanak Chand : There is a small amendment just before this in my name. It is No. 68 in today's list. It is this : That in line 2 after the word "landholder" insert "or has been realized by mistake."

Hon'ble the President : Notice of this amendment was received yesterday. Is there any objection to this being moved ?

(Some honourable members objected to its being moved.)

Hon'ble the President : As objection has been raised it cannot be moved.

Pandit Govind Ballabh Pant : I was just submitting that the language of the section is likely to mislead any unwary landholder in an unguarded moment. It means, or by implication it suggests, that

the landholder can resort to exactions and extortions if he restricts the amount that he exacts to the limit of the arrears that are due to him. I think that is not what is intended. Whether money is legitimately due to the landlord or not, he is to realize it in accordance with the law. If he does not do so, then even if he extorts what is due to him he is punishable by the Indian Penal Code. By this language we are in a way suggesting that the landlord is empowered to realize the arrears that are due to him by resorting to coercive processes of his own accord. That is not, I think, what was ever intended. If exaction is made, whether it be of legitimate dues or whether it be of dues that are not in any way payable by the man concerned, then in either case it is an offence under the Indian Penal Code. If you take anything out of a person against his will by force it means extortion. If a money-lender goes to his debtor and compels him to pay the amount that is due to him, then he is punishable under the Indian Penal Code. So I say that a tenant from whom any sum or produce is exacted shall be entitled to recover from the landlord such compensation not exceeding double the amount, and so on . . . I omit the intervening words. Otherwise the section is likely to cause unnecessary misapprehension and may, as suggested, at the outset mislead the unwary, simple and ignorant landlord into believing that he can exact the amount that is due to him under this section and will not be liable under any law for doing such an act.

Hon'ble Sir Sam O'Donnell: I do not think that the amendment will have the effect that the honourable mover has in view. I have here Mr. Agarwala's valuable edition of the present Tenancy Act. On page 200 he refers to section 36 which is, I think, exactly the same as the clause we are now discussing. In the foot-note he says "exact means collected privately (*Ram Prasad v. Ram Tahal*) and not by means of a suit." Then in another case (*Chandramani v. Davendra*) it was held: "Exact means nothing more than collected after demand." Therefore the amendment will not seem to serve the purpose which it has in view. I understand that what the honourable member for Naini Tal desires is that if the landlord collects money by force or fraud he should be liable to pay a penalty. But if the landlord resorts to methods of that kind a criminal complaint will lie against him. The tenant can bring a complaint against him for intimidation or for illegal confinement, for assault or for extortion. Extortion would clearly cover the case which the honourable member has in view. On the other hand if we have a clause as suggested it will simply mean that the landlord will be liable to pay a penalty if he collects money privately, and not by means of a suit. Apart from that the day has long passed since methods of this kind were common. According to Mr. House in very early days, about a hundred years ago, very undesirable methods were adopted. I think those days are past. It is not necessary, therefore, even if the matter were not provided for by the criminal law, to make a provision of the kind suggested.

Pandit Govind Ballabh Pant: I am sorry I am unable to agree with the Hon'ble the Finance Member. My point is that if a landlord gets something voluntarily out of a tenant, whether it is due or not, he commits no offence whatsoever. If, on the other hand, he gets anything out of a tenant involuntarily, whether it is due or not, he commits an offence. In either case the words in the clause are unnecessary and ought to be struck out.

Hon'ble Sir Sam O'Donnell: I am quite willing to accept the interpretation of the honourable member that when anything is exacted by a landlord from a tenant, it is extortion. My point, however, is that extortion is provided in the criminal law, and it is unnecessary to make any special provision for it here. This clause has been taken from Act II of 1901, and so far it has met all requirements.

Question that the words as in Bill reported by the select committee stand part put and agreed to.

Question that clauses 48 and 49 stand part of the Bill put and agreed to.

CLAUSE 50.

50. (1) The rent of a fixed-rate tenant, an ex-proprietary tenant, an occupancy tenant, a statutory tenant or an heir of a statutory tenant may be enhanced or abated only—

(a) by registered agreement, or

(b) by decree or order of a revenue court.

(2) The rent of such tenant shall not be enhanced by more than one-third of his existing rent, subject to the condition that the rent fixed shall in no case be less than half the annual rental value at the circle or village rates which are applicable under clause 59 to that class of tenant.

This sub-section shall not apply to decrees or orders of a revenue court for enhancement of rent on account of an increase in area.

Pandit Govind Ballabh Pant: I beg to move that for the word "one third" the word "one-fourth" be substituted in clause 50(2).

The object of this amendment is to bring down the limit of enhancement from one-third to one-fourth, and I believe honourable members in the House are in agreement with me on the point. So I need make no lengthy speech.

Hon'ble Sir Sam O'Donnell: There are those who hold that it is impracticable and undesirable to impose any precise limit to the amount of rent, but I do not agree with them. Our experience in the matter of controlling rents shows that it is quite practicable, and every one will agree that it is desirable, if it is practicable, to impose a limit. On the other hand, it is clearly dangerous to try to keep rents at too low a level. On that point we have had definite experience in the working of the old Oudh Rent Act. Under that Act rent could only be increased after seven years by one anna in the rupee. That limit was adopted because inquiry had shown that in the twenty years before 1886 rents on the average had risen by that amount. Then prices began to rise, the value of the land went up, and in a very short time the enactment became a dead-letter. Not only that; it gave rise to the substitution of *nazzrana* for rent and to the concealment of rents. The history of that Act shows quite clearly that if you attempt to keep the rents too low, the attempt fails, and very undesirable results follow. I am not in the least anxious that rents should be raised either too rapidly or that the enhancements made at each revision should be too great; but I am convinced that it is a mistake to fix too low a limit.

It is a little difficult, however, to discuss adequately this amendment, because we do not yet know what period will be fixed in the Bill for the revision of rents. The proposal at present in the Bill is that the

statutory period should be thirteen years, but I notice that there are various amendments which propose that the period should be one-half of the period of settlement; effect therefore of the present amendment, if accepted, will vary according as the rents are to be revised after ten, thirteen or twenty years. And accordingly it is impossible to say what its precise consequences will be. On general grounds, however, it seems to me that the limit of 25 per cent. is too low. It might happen that prices did not change or that there was no large upward movement in the value of land. Twenty-five per cent. might then work all right. On the other hand, prices might move very rapidly. In that case the enhancements might be unduly low. And the result of keeping rents too low is undoubtedly to encourage sub-letting, and sub-letting is undoubtedly injurious to the interests both of the landlord and the actual cultivator. The State does not suffer. I shall show that later. The limit of one-third is, to my mind, quite reasonable. Even in a period of thirteen years, if that period is selected, large changes may take place. We all remember that thirteen years ago wheat was selling at twelve seers a rupee. It is now selling at six seers or less to the rupee. No doubt that was an exceptional period. But take the ten years before that, i.e., 1904—1914. Prices went up by nearly 40 per cent. If we have a similar rise in future, it is possible that the limit of 25 per cent. would be seriously inadequate. Therefore I think that on general grounds of principle the limit of one-third is decidedly preferable.

Pandit Nanak Chand : I rise to support the amendment that has been moved by my friend Mr. Pant. I was surprised to hear the remarks of the Hon'ble the Finance Member which were made in spite of the fact that my friend Mr. Pant had expressed that there was almost a unanimity among the non-official members on this proposal. The Hon'ble the Finance Member, while criticizing the amendment, cited the extreme case of the old Oudh Rent Act. The provision there was that the zamindars could not enhance rent more than one-sixteenth. Here the proposal is to allow enhancement to the extent of one-fourth of the annual rent. The instance that has been cited in support of the opposition is an extreme case. He has pointed out that the result of keeping a very low percentage in Oudh was that the zamindars exacted *nazrana* and that it led to the concealment of rents. But he has forgotten to point out that this was possible when the tenure was not stable and the tenant could be ejected any moment at the sweet will of the zamindar. When we find that in the province of Agra a very large number of tenants are occupancy tenants and that the principle of life-tenancy is being conceded by this Bill to some of the non-occupancy tenants, it is doubtful whether this would be possible for the zamindars of the Agra province to do. I personally think that neither the exaction of *nazran* nor the concealment of rent will be possible in the case of life-tenancy and occupancy tenancy. Further, the Hon'ble the Finance Member has pointed out that this will lead to sub-letting. Sub-letting will be subject to the provisions of this Bill, and if any tenant would exceed that limit he will be liable to ejectment. For these reasons I think that we ought to accept this amendment, and I hope the Hon'ble the Finance Member will not persist in his opposition.

Pandit Govind Ballabh Pant : I was surprised, though not astonished, to hear what fell from the lips of the Hon'ble the Finance Member, because I had an occasion to get a bit of his mind when we were in the select committee.

Hon'ble the President: The honourable member is transgressing a certain rule.

Pandit Govind Ballabh Pant: There should be some rational principle about our rural economy, and if the Hon'ble the Finance Member is prepared to introduce a scientific system I will not mind what the rents levied are. We all know that, so far as the residents of urban areas are concerned, and so far as those who are fortunately connected with other professions and not with land are concerned, their income up to a minimum of Rs. 2,000 is exempt from income-tax. From that I infer that the Government agrees that ordinarily a man cannot live up to a reasonable standard below an income of Rs. 2,000, and that is why up to that limit the Government does not interfere with his income. Similarly, if we are going to have economic holdings by means of which every cultivator is guaranteed enough for his ordinary requirements, I would not mind what is the rate of rent levied. But, as we know and as was admitted the other day, the masses are poor and their standard is so low that they are leading a life worse than that of beasts. I think it is very cruel on the part of those gentlemen who callously assert that it will be detrimental to their interests if more is allowed to them to keep their body and soul together. There are millions and millions of our countrymen who get only one meal a day. Can it be said that it is equitable or human that they must be squeezed further? If it were possible we would have proposed that all rents should be permanently levied and the rates of rent should not be enhanced hereafter. But, as we know that the State is not prepared to take up such a proposition, it is not proper for us to make a proposal which will not be acceptable to the mighty in power. With this limit of one-fourth, however, there should be no quarrel. There is nothing sacrosanct about the one-third proposed by the Hon'ble the Finance Member. After all, what is the difference between one-third and one-fourth: the difference is only of one-twelfth. So far as I am aware, there are hardly cases in which ordinarily enhancement goes beyond one-fourth. So the limit that we are imposing is not a low one. But, as I submitted, fortunately in this case those whom the Hon'ble the Finance Member considers to be most vitally interested in this matter and who he thinks are likely to benefit or lose, are prepared to make this concession for poor brethren of their own flesh and blood. In these circumstances I do not consider it worth while arguing the matter further.

Hon'ble Sir Sam O'Donnell: I think the honourable member for Naini Tal has missed my point. I am entirely opposed to excessive enhancements, and I also believe that rents can be and ought to be controlled. My point was that if you endeavour to keep them too low, having regard to the competition for land, then your object will be defeated. The result will be *nazrana*, concealment of rent and sub-letting. The limit proposed in the Bill is, of course, not a normal nor an average, it is a maximum. The reason why I prefer the maximum of one-third is that circumstances may well be such as to make it a more reasonable maximum than 25 per cent. I do not suggest that the difference between the figures is of enormous importance. I quite admit that enhancements exceeding 25 per cent. may not be required. At settlements, I believe the enhancements made are usually, even in the case of very low-rented tenants, not in excess of 25 per cent. My contention, however, is that when we are legislating, and especially when we are laying down a figure

which is a maximum, we ought to provide for all contingencies. It is quite certain, whatever maximum we select, the enhancements actually made will always be extremely moderate, and therefore the interests of no class will suffer if the figure in the Bill is retained. On the other hand, I think that circumstances are conceivable in which the adoption of a lower limit might work out badly.

Question put that the word "one-third" stand part of the Bill.

The House divided: Ayes, 23; Noes, 51.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.

Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Babu Jai Narayan Chaudhri.
Khan Bahadur Chaudhri Amir Hasan Khan.

Raja Bahadur Brij Narayan Rai.
Babu Khem Chand.
Lala Kishan Lal.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Sakseena.
Babu Damodar Das.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Rai Jagdish Prasad Sahib.
Rai Sahib Chaudhri Sheoraj Singh.
Pandit Nanak Chand.
Lala Babu Lal.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Kharagjit Misra.
Raja Suryapal Singh.
Babu Nemi Saran.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Jhanni Lal Pande.
Licut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Rai Bahadur Pandit Balbhadr Prasad Tiwari.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.

Pandit Yajna Narayan Upadhyay.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
Bhaya Hanumat Prasad Singh.
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Ubaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Raja Jagannath Bakhsh Singh.

Question that the word "one-fourth" be inserted put and agreed to.

Question that the further consideration of clause 50 be postponed till after the roster system has been discussed put and agreed to.

The Council was then adjourned to the following day.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Friday, July 9, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m.
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT:

(94)

Hon'ble Sir Sam O'Donnell.
Hon'ble Liaut Nawab Muhammad Akbar
Sa'ib Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Bunt.
Kunwar Jagdish Prasad
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Bura.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Doid.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Hecheuroder.
Raja Muhammad Ejaz Rasul Khan.
Raja Bahadur Brij Narayan Rai.
Mr. H. Davil.
Babu Khem Chand.
Babu Narayan Prasad Arora.
Babu Sengam Lal.
Babu Mohan Lal Saksena.
Babu Damodar Das.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Belar.
Thakur Marjit Singh Rathor.
Rai Jagdish Prasad Sahai.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sitoraj Singh.
Pandit Nanak Chand.
Lala Bibu Lal.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Khiragjit Misra.
Raja Suryapal Singh.
Lala Dhakun Lal.
Babu Nani Saran.
Chaudhri Balan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Brijnadan Prasad Misra.
Pandit Jhanni Lal Pande.
Lieut. Raja Durga Narayan Singh.

Raja Narayan Pratap Singh.
Rai Bahadur Pandit Balbhadra Prasad
Tiwari.
Pandit Sri Krishna Dutt Faliwal.
Babu Parsidh Narayan Anand.
Pandit Yajna Narayan Upadhyaya.
Raja Sri Krishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Shibzaid Rai Pratap Narayan
Singh, Rai Bahadur.
Raj. Indrajit Pratap Bahadur Sahi.
Bhaya Hanumant Prasad Singh.
Pandit Govind Ballabh Pant.
Mr. Mukand Lal.
Babu Ram Chandra Sinha.
Raja Shankar Sahai.
Dr. Jaikaran Nath Misra.
Rai Bahadur Thakur Mashal Singh.
Kunwar Surendra Partap Sahi.
Khan Bahadur Mr. Muhammad Aslam
Saifi.
Maulvi Zahir-ud-din.
Rao Sahib Abdul Hamid Khan.
Khan Bahadur Chaudhri Amir Hasan
Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman
Khan.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Shaikh Masud uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafiat Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq
Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mabbub Ali Khan.
Khan Bahadur Mr. Ashiq Hussain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Qazi Habib Ashraf.
Raja Saiyid Ahmad Ali Khan Alvi.
Khan Bahadur Chaudhri Muhammad
Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Rai Bahadur Lala Mathura Prasad Meh-
rotra.
Raj. Shambhu Dyal.
Lieut. Raja Shukh Intiaz Rasul Khan.
Raja Jagannath Bakhsh Singh.
Mr. E. M. Soutar.
Mr. Tracey Gavin Jones.

THE AGRA TENANCY BILL.

CLAUSES 51 AND 52.

Question that clauses 51 and 52 stand part of the Bill put and agreed to.

CLAUSES 53 AND 54.

Question that the consideration of clauses 53 and 54 be postponed, put and agreed to.

CLAUSE 55.

55. A roster year is an agricultural year fixed by the Local Government in respect of any district or other local area, who have leanings towards the zamindars' interest, and that very fact goes to indicate that the clause is neither wholesome nor desirable. I will not at this stage dwell on the reasons which prompt me to make this motion. I had given some of them in the minute of dissent, which I had the honour of signing along with some of my colleagues. In our province we have got a very regular system of land records. We are in that respect in a much better position than other provinces of India and year by year all corrections are made in the land records. Whenever the state of things existing at any time has to be examined, one can get a fair idea of it from the records for the time being and by study of the previous records. The roster system provides for the scrutiny of the state of things that have a bearing on the determination of rent periodically. I think our land records are of such great assistance to us that it is not necessary that the whole paraphernalia of the settlement should be sprung upon us after short intervals. It will be a costly system. Those who have seen the figures showing the total number of the provincial officers in our province during the last ten years must have been struck by the extraordinarily rapid growth in the number of our provincial executive officers, and that has added enormously to our bill for the purposes of meeting the administrative expenses. If we have a system like this introduced, it will add considerably to that bill and will make a further inroad on our provincial finances and to that extent money will not be available for more beneficent purposes. So in the interest of economy of public finances it is necessary that we should adhere to the system which has been in force so far. Besides, we all want harmony and good will between the zamindars and the tenants. Those who have an experience of the settlement operations must be aware of the fact that every time the machinery is set at work there is unnecessary irritation caused. I apprehend that if this system is introduced, it will have the same effect, but only repeated many times between the periods of two settlements. We all want to avoid litigation. We all want that there should be as little of ill-will and as few occasions which are likely

Definition of roster year.

Pandit Govind Ballabh Pant : I move that clause 55 be omitted

to engender bitterness between the landlords and tenants as possible. If the roster system is introduced, it is likely to have a contrary effect. It is, after all, a matter of procedure, and I think the system that has been in force so far has not proved harmful to anybody. In these circumstances I do not think we should introduce an innovation which has no place in the Tenancy Act of any other province except that of Oudh, in which it was introduced in the year 1921. Those who had seen the working of it in the districts in which it has been introduced have told me so. I do not know how far they had occasion to study the subject, but from the occasional conversation that I had with them they told me that it has not been a very wholesome system and it has led to unnecessary bitterness and its action had often times been affected by the idiosyncracies of particular officers that had been placed in charge of the operations, and that there had not been any uniformity in the procedure that has been adopted by the one or the other. I feel, in spite of what has been hinted in this House by the Hon'ble the Finance Member, for whose opinion we all here have high respect, that this will certainly tend to increase the land revenue. It will have the effect of raising the assessable assets and of raising the standard of rates that may be made applicable to *sir* and *khudkasht* areas, and as we are expecting that as we advance further the landlord will take more and more to cultivation and there will be a steady expansion in the *sir* area, it will also be detrimental to their interest. I do not think it can be very helpful to the interests of the tenants. So considering all these things I feel that it is absolutely necessary that the roster year system should be omitted from this Bill.

Hon'ble Sir Sam O'Donnell : The roster year system has been described as an innovation "fraught with disastrous consequences." I am quoting from the minute signed by the honourable member for Naini Tal and other members. As a matter of fact, the system in its essence is not a new one. It is an old system, it is a system which has been applied for a great many years at every settlement, and which has worked smoothly, efficiently and to the satisfaction of both landlords and tenants. In the same minute I find the following statement made :—

"The roster system looks like a contrivance by which the Government seeks to raise the level of rents of occupancy tenants and assumption rates for *sir* and *khudkasht* with a view to make up for the deficiency in land revenue which will otherwise accrue from the modified provisions of the Settlement Bill."

Now, I am sure that the honourable members who signed the minute had no desire to be unfair, and I hope that on reflection they will realize that this is not a fair criticism. The roster year system, so far as occupancy tenants are concerned, will be found in the draft Bill prepared by the Board of Revenue in 1918. Moreover, the roster year system was recommended by the 1924 committee, two-thirds of the members of which were elected members of this Council. I leave it to Mr. Lane to deal with the suggestion that we are trying to raise the valuation of the *sir* and *khudkasht* area and with the suggestion that we shall gain more revenue if this system is admitted. He will have no difficulty in meeting those criticisms.

[Hon'ble Sir Sam O'Donnell.]

The honourable member for Naini Tal spoke somewhat briefly on this motion, but I take it that the main criticisms on the roster year system are those contained in the note written by him and certain members of his party. I propose to proceed on that basis. I shall take it that these are the criticisms which are levelled against the roster year system. Now, the first of these criticisms is that under this system there will be a rapid and excessive enhancement of the rents of occupancy tenants. To that, in the first place, I would reply that there is a limit to the enhancement that can be made at each revision. We propose that there should be a limit of one-third. The Council has adopted a limit of 25 per cent. Under our limit, it would take at least nearly 40 years for the rents of the occupancy tenants to be doubled. Under the limit of the Council it would take more than 40 years to double them, assuming that the maximum enhancement were made on each occasion, and many of the rents of occupancy tenants are so low that even if they were doubled, they would be well below the non-occupancy rents. But, of course, the limit is not a normal, it is not an average, it is simply a maximum. There is no reason to suppose that, save in favourable circumstances, the rents would be enhanced to anything like one-third at each successive revision.

The enhancements would entirely depend on the circumstances of the time, and unless there had been a rapid rise in the letting value of the land, would be well below the maximum permissible. We have definite evidence on this point. As I have already pointed out, the roster year system is exactly the same as that employed by the settlement officer. Now, Sir, I have here figures showing what took place during recent settlements. In the Muzaffarnagar district the old occupancy unenhanced rate was Rs. 4.66; the rent for occupancy holdings of over 10 years was Rs. 6.66; of occupancy holdings of over 10 years was Rs. 8.40; the non-occupancy rate was Rs. 11.49; the standard rate fixed by the settlement officer was Rs. 6.17. In the Bulandshahr district the occupancy rate was Rs. 5.48. That included the old occupancy rent and the recent occupancy rents. They were not distinguished. The non-occupancy rate was Rs. 10.48; the settlement officer's rate was Rs. 6.09. In Muttra the old occupancy rate unenhanced was Rs. 4.25; the old occupancy enhanced rate was Rs. 4.88; the occupancy rate of over 20 years was Rs. 5.13; the occupancy rate of over 10 years was Rs. 6.69; the settlement officer's rate was Rs. 5.07. In Saharanpur the old occupancy rate unenhanced was Rs. 4.38; the old occupancy rate enhanced was Rs. 5.03; the occupancy rate of over 20 years was Rs. 5.26; the occupancy rate of over 10 years was Rs. 6 and the non-occupancy rate was Rs. 8.46; the settlement officer's rate was Rs. 5.48. It will be seen that except to a very slight extent in the Saharanpur district no enhancement was made in the case of the occupancy land of over ten years and there was no enhancement in the case of the occupancy land of over 20 years. Practically the whole of the enhancement was in respect of the old non-occupancy rents which bore no proper proportion to the letting value of the land; the average enhancement even in the case of these rents was 20 to 25 per cent. and the rates adopted by the settlement officer were at least 40 per cent. below the non-occupancy rates. I think, Sir, that shows conclusively that the enhancements which will be made under the roster year system will be

moderate and reasonable and well within the capacity of the tenant. I am entirely opposed to excessive enhancements. Rack renting is always an evil. It may be a deplorable evil. In my own country at one time rack-renting was such an evil. But, Sir, I think it is a mistake to suppose that it is in the interests of the tenant that the rent should be too low. The highest rents in this province are paid in the western districts and everyone knows that the prosperity of the tenants is far greater in the western districts than in the eastern districts. Of course, in the western districts the average area of holdings is large. That must be taken into account. It is a mistake, however, to suppose that very low rents make for good cultivation or the benefit of tenants. On the contrary they lead to inefficient cultivation or the sub-letting of holdings which are let to rack-rented sub-tenants. Now, Sir, I pass on to the statutory tenants, i.e., to the question of the enhancement of their rents. On that point we have the evidence both of the settlement proceedings and of the roster year rates in Oudh. The problem before the settlement officer in determining the valuation of the non-occupancy land is essentially the same as that which confronts the roster year officer. In both cases it is necessary to determine whether the non-occupancy rents stand at such a level that they can be paid over a series of years without any hardship to the tenants. I will quote figures showing the procedure followed by the settlement officer in valuing non-occupancy land. In the Muzaffarnagar district the settlement officer allowed a deduction of 15 per cent. from the recorded rentals; in Bulandshahr a deduction of 16 per cent.; in Muttra, where no doubt the circumstances were somewhat exceptional, of 25 per cent., and in Saharanpur of 17 per cent.

It is quite clear therefore that the rates adopted by the settlement officer in valuing the land were very moderate, and it is quite certain that the roster year officer will follow the same procedure. Then, Sir, we have had experience recently of the rates adopted by the roster year officers in Oudh. We have figures showing the relation of the level of sanctioned rates to that of recorded rents for the Kheri and Partabgarh districts. The recorded collections in Kheri for the last four years was nearly 91 per cent. of the recorded rental. The Kheri rates give a valuation which is also 91 per cent. of the recorded rental. In Partabgarh the average recorded collections for the last four years was 99 per cent. of the recorded rental and the special officer chose rates which were practically at that level. In both districts there is no doubt that *nazrana* is realized in addition to the recorded rents. In Partabgarh the roster year officer calculated that *nazrana* amounted to 20 per cent. of the recorded rents. It is perfectly clear, therefore, that the rates chosen by the roster year officer were moderate rates and well within the level of the collections.

Now, Sir, it has been said that this system will promote litigation. Here again we have the experience of settlements and we have the experience of the working of the system in Oudh. What happens at settlement? A notice is served on the tenant. The court explains to him what the valuation of his land is at the sanctioned rates. If he has any objection to urge, that objection is taken into account and if necessary the enhancement is moderated and spread over a number of years. In nearly every case when the facts are explained to the tenant he is entirely satisfied. The number of appeals is very small indeed and they are hardly ever successful. The system is one under which

[Hon'ble Sir Sam O'Donnell.]

as many as 300 khatas are dealt with in a single day. It therefore reduces litigation to the minimum. Then, Sir, we have also experience of what has happened in Oudh under the roster year system as regards litigation. In Kheri only four suits were instituted and in Bahraich there were only 31 suits. These suits were to contest notices of enhancement. If the tenant is dissatisfied with the notice he goes and files a suit. In Gonda the number of suits was 452. Even in Gonda the total is negligible in relation to the number of tenants. Thus it is quite clear that this system, far from increasing litigation, will reduce it to an absolute minimum.

Then, Sir, it is said that the system is costly. No doubt the roster year system does cost money, but it is money well spent. Moreover, unless there is to be no system of enhancement at all, there must be considerable expenditure. If there is to be any proper system for the revision of rents, that system is bound to be costly. If we were to throw the whole burden on the courts, we should undoubtedly have to increase the number of deputy collectors.

Lastly, I would ask what the alternative system is. We shall come later to an amendment of the honourable member for Naini Tal, but I may perhaps anticipate the course of the debate and say that the effect of his proposal is this. There will be absolutely no enhancement whatever of occupancy rents. The honourable member has admitted in his minute of dissent that under the present system the rents of occupancy tenants remain practically at the same level throughout the period of settlement. His amendment goes further and practically stabilizes them for ever, because, under it whenever an application is made for the enhancement of rent of a tenant's holding which he has held for thirty years, the court will compare the rent of that tenant with the rent of another tenant's holding which has been held for the same period. Therefore the level of rents will be retained unaltered. The honourable member himself admits that even occupancy rates should be liable to enhancement during the course of the settlement; yet he is proposing a system under which practically no enhancement is possible. He is taking away with one hand what he proposes to give with the other hand.

As to the statutory tenant, I have no objection to the formula proposed by the honourable member. I would point out, however, that he is taking away the whole machinery by which the rents specified in that formula can be calculated. He proposes that the court should base its order on genuine, adequate and stable rents which are paid by substantial tenants who depend for their livelihood on the produce of their holdings and for land of similar quality in the neighbourhood and which can be paid without hardship over a series of years, due regard being had to the normal movements in prices and rents and the letting value of land in areas where the competition for land is not abnormal. That of course is taken almost entirely from the Bill. Therefore, so far as it goes, I have no objection. My point is that the ordinary revenue court cannot work out genuine, adequate and stable rents paid by substantial tenants for a series of years. That can only be done by the elaborate procedure which is followed by the settlement officer or the roster year officer—a procedure under which soils are classified; rents for the various classes of soils are determined; rents

are analysed; rents which are excessive or rents which are too low are rejected and a scientific rate is determined. The ordinary court has not the material, it has not the experience, it has not the time for that. The result will be that the decisions will be conflicting, inconsistent and unequal. It is not possible in fact to say what decisions the courts will come to, and there will be an immense increase in litigation. The appellate court will naturally be dissatisfied with the decisions of the lower court, which will be based on no proper material. The records will be handled backwards and forwards between the courts. I do not think that the honourable member for Naini Tal desires that litigation should increase. I am sure that his desire is just the reverse. But if he had set out to devise a system by which litigation would be increased, I do not think that he could have suggested a system better calculated to have this result.

The roster year system is the only scientific system that has ever been devised. It has been worked successfully for a long series of years; it has given satisfaction to the landlords and the tenants; it has reduced litigation to the minimum. The alternative system will, so far as the occupancy tenants are concerned, give no enhancement, whatever the conditions, will stabilize rents practically for ever and thereby promote sub-letting and the rack-renting of the sub-tenant. It will also be detrimental to the interests of the statutory tenants since it is certain to increase litigation.

Mr. H. A. Lane: Anyone who has had experience of the working of the roster year system finds it difficult to understand the opposition to it. The representatives of the tenants probably fear that there will be an excessive enhancement of the rents of occupancy tenants. The Hon'ble the Finance Member has shown that the roster year system follows the system employed in settlements for enhancements of rent. He has also shown how moderate the rates are which are chosen by the settlement officers as standard rates which are used for the valuation of the occupancy land. Under the Bill the enhancement of rent is limited now to 25 per cent. That is an additional safeguard and, in view of the very low level at which the old occupancy rates are now, there need be no real fear that the roster year system will impose an undue burden on the occupancy tenants. There is, however, another point which affects the landlords, not the big landlords, but the small landlords who cultivate their own land.

I think that there is a very general fear among the landlords that the roster year system will have the effect of very great enhancement of revenue paid by petty zamindars who hold *sir* and *khudkash* and cultivate the bulk of their own land. I will endeavour to show with as few technicalities as possible that this fear is even more ungrounded than the fear that the rent of occupancy tenants will be unduly enhanced. It is necessary first to estimate as nearly as one can what enhancement is likely to be derived from the rates chosen by the special officer in each roster year. The Hon'ble the Finance Member has shown that in recent settlements the standard rates have given an enhancement of only 20 to 25 per cent. on the old occupancy rents. The settlement takes place after thirty years. In the case of Muttra district the settlement took place after forty-five years. The roster year will occur, according to the terms of the Bill, after thirteen years. There is an amendment which will extend the period to twenty years. But in

[Mr. H. A. Lane.]

either case the statutory period is considerably shorter than the period of settlement. It is therefore reasonable to suppose that the level of sanctioned rates in the roster year will not be more in excess of the existing occupancy rates than the settlement rates have been. If in a settlement after thirty years the settlement officer only considers it desirable to choose a rate which will give an enhancement of from 20 to 25 per cent., it is certain that the special officer of the roster year after thirteen or twenty years will not choose rates giving a greater enhancement, specially in view of the limitation of enhancement to 25 per cent. Presuming that the statutory period will be one-third of the period of settlement, that is to say, there will be two enhancements between settlements, it is reasonable to assume on these figures that at each roster year the enhancement will not be more than 15 per cent. It is a fair assumption from the figures which we have before us of settlements. If we take those figures and put the existing rent of the old occupancy tenants as Rs. 100, the level of rent after the first enhancement will be Rs. 115, and after the second enhancement it will be Rs. 130, and if the settlement officer at the next settlement comes to the conclusion that a third enhancement is due and gives an enhancement of 15 per cent., we get the level up to Rs. 150. If the settlement officer chooses Rs. 150 as the level as representing a fair level for his standard rates, and he will certainly not go higher, he will get the gross assets of *sir* and *khudkasht* represented by the figure Rs. 150. This proprietary cultivation will receive a reduction of 25 per cent., which will bring the level of the valuation down to Rs. 112. Taking the revenue on Rs. 112 at 40 per cent., the revenue payable at next settlement will then be Rs. 45. The expiring revenue on this *sir* and *khudkasht* assessed under the system at present in force would be Rs. 40. The result of the introduction of the roster year system will therefore be to raise the revenue on this *sir* and *khudkasht* from Rs. 40 to Rs. 45.

If the movement of prices would justify an enhancement of rent from Rs. 100 to Rs. 150, surely the enhancement of the revenue on *sir* and *khudkasht* from Rs. 40 to Rs. 45 is not excessive in any way. If you take the statutory period as one-half of the period of settlement and allow an enhancement of 20 per cent. on each occasion, the figure at which the occupancy land now rented at Rs. 100 will be valued at next settlement will be Rs. 144. Taking that level of valuation for *sir* and *khudkasht* and allowing 25 per cent. reduction for the proprietor's cultivation, the figure at which the *sir* and *khudkasht* will be valued is Rs. 108 and revenue at 40 per cent. is Rs. 43. The present revenue would be Rs. 40. Therefore in one of these two cases in *sir* and *khudkasht* you get an enhancement of revenue from Rs. 40 to Rs. 45, and in the other case from Rs. 40 to Rs. 43. That surely is a moderate and reasonable enhancement. It cannot be argued that the level of the revenue will be high, because the present revenue on the assumption areas is extremely lenient. These areas have in recent settlements been valued at the rate paid by occupancy tenants of more than twenty years' standing, which is less than half the competition level, and the result is an extremely lenient assessment of revenue. I hope, Sir, that this will dissipate the fears of the landlords that the roster year system will lead to an excessive enhancement of the revenue of the petty proprietor. It is one of the cardinal points

of the Government policy of land revenue that the petty proprietor should be treated as leniently as possible, and it would mean a complete reversal of that policy if the Government were to adopt a system which would greatly increase the burden of the small cultivating proprietor. It is unnecessary to say that that is not the intention of the Government.

Pandit Govind Ballabh Pant : I have listened to the speeches of the Hon'ble the Finance Member and Mr. Lane with great attention and respect. I do not want in any way to suppress, but I fully realize that so far as the technicalities of the subject are concerned, they are in a better position to understand the delicacies of the procedure applicable to enhancement and settlement than I am. But I regret that, even after having carefully listened to them, I do not find much that can lead me to change my opinion. The Hon'ble the Finance Member has questioned the correctness of my statement in the minute of dissent and also that which I indicated here in the course of my speech while moving the amendment that this procedure is likely to lead to enhancement of revenue which would not be available to the same extent if such a system were not prescribed in the Bill. He has in fact regarded that criticism as unfair. I give my reasons and will be quite prepared to be corrected. The Hon'ble the Finance Member has practically admitted that under the existing system there has been little enhancement of occupancy rents. From that it follows that under the roster year system he expects a larger increase in occupancy rents than has been the case so far. That being admitted, it follows as a corollary that it will lead to a larger assessment of revenue, and for this I will give you my reasons, which I hope will clinch the matter fully. Under the Land Revenue Bill as it has emerged from the select committee all the assumption areas are to be valued on the standard rates, and under section 63 (4) these rates are to be based on the rents paid by occupancy tenants. In this connexion I should like to read to the Council a section from the Land Revenue Bill, which, be it noted, has not been inserted by the select committee, but has emanated from the Government, a fact which implies their concurrence. It runs thus:—"The settlement officer, in accordance with rules made under section 234, shall determine a standard rate for each class of land in each circle. Such rates shall be called the standard rates; in Oudh they shall be based on genuine, adequate and stable rents, which are paid by substantial tenants of average skill and industry, who depend for their livelihood on the produce of their holdings, due regard being had to previous movements in rents, and rents fixed by agreements between landlord and tenant since the last roster year being distinguished from rents fixed by a court in accordance with the sanctioned rates of a roster year. In Agra, so long as there still exists a substantial area in which occupancy rights have been acquired under the Agra Tenancy Act, 1901, since the previous settlement, the standard rates shall ordinarily be based on the rents paid by tenants who have acquired occupancy rights under the Agra Tenancy Act, 1901, since the previous settlement, and whose period of tenure is twenty years and more, but the settlement officers shall also have regard to the rents paid by tenants whose period of tenure is over twelve years and less than twenty years. When in Agra there is no longer a substantial area in which occupancy rights have been acquired under the Agra Tenancy Act, 1901, since the previous settlement, the settlement officer shall in determining the standard rates have regard not only to the previous

[Pandit Govind Ballabh Pant.]

movements in rent and the letting value of land, but also to the existing level of occupancy rents, distinguishing between holdings of old and those of recent standing." I will next refer the Council to clause 63C, which says that the assumption area shall be valued in accordance with standard rates. Further on, in clause 63D it is stated that the settlement officer shall make such deduction as appears suitable from the valuation of the *sir* and other land which is ordinarily cultivated by the proprietors themselves. It will appear from the above quotations that assessment is to be made on the basis of standard rates, and the latter are to be based on the rents actually paid by occupancy tenants at and before the time of the settlement. What is the natural deduction from this? If the occupancy rents are high, the standard rates will be high, and if the occupancy rents are low, the standard rates will be low. The settlement officer has to pay no regard to statutory rates, nor is he to be in any way influenced by the rates for non-occupancy land. The entire basis of his assessment is the rent actually paid by the occupancy tenant prior to the settlement. The conclusion from it is irresistible. If the occupancy rents have been raised from what they were at the time of the last settlement, then the standard rates will be high, and if the occupancy rents have not been so raised, then the standard rates will be almost stationary. Therefore, the effect of the roster system is to enhance the occupancy rents between the period of two settlements, with the result that the level of standard rates will rise, and as the latter determine the value of assumption area, it naturally follows, and I think conclusively, that any system which conduces to the enhancement of occupancy rents leads eventually to the enhancement of land revenue. Well, if it is said that land revenue has to be enhanced for the purposes of the State, that will have the merit of candour. That such a system will lead to enhancement of revenue is correct, but to say that such is not the case is a proposition which I am unable to follow for the reasons I have already given. I do not see how the Hon'ble the Finance Member, with his full knowledge of the Bill, should have questioned my statement. I have absolutely no doubt that so long as the occupancy rents are the determining factor, and so long as the standard rates are guided by the former, the higher the level of occupancy rents, the greater the scope for enhancement of land revenue and *vice versa*.

Now, Sir, I briefly re-state what I have already said. The occupancy rents alone should be taken into account, while the statutory and non-occupancy rents should be discarded altogether. Further, it is admitted by the Hon'ble the Finance Member in the course of his speech that the roster system will tend to increase the occupancy rents, which will, in their turn, raise the land revenue. If, on the other hand, the occupancy rents are not enhanced, then necessarily there can be no increase in land revenue. Thus I submit that if my line of reasoning is correct, then my argument should be accepted by the Government; but if there is any flaw in it, I shall be glad to revise my opinion. It has been said that the roster year will be particularly beneficial to the small proprietor. I do not at all understand how this will be so. I have no hesitation in saying that it will be particularly onerous to him. He has ordinarily got some little *sir* and he is, besides, an occupancy tenant of some other lessor in his own village. I think honourable members will agree with me that ordinarily a man who takes to cultivation has got a small holding

of his own in which he has proprietary right and generally takes land from some other person and cultivates it as an occupancy tenant. The roster year will raise the value of *sir* area for assumption purposes and it will further increase the rent of the occupancy tenant. Will it not bear heavily on the small proprietor? If we have any sympathy with the small proprietor, we must accept that this roster year will not be helpful to him, but may even be pernicious. The Hon'ble the Finance Member has read over the rates that were fixed for the various districts in Oudh and he has shown that the rates that were fixed varied from 91 to 99 per cent. of the recorded rents. That goes to indicate that we can safely rely on the recorded rents and that all this elaborate machinery is useless. I do not see the utility of such a cumbersome process being introduced simply for establishing that which is patent.

The Hon'ble the Finance Member says—what is the alternative system? I submit, Sir, the alternative system has been in force so long. We have not yet been told that the system which has been in force so far has worked disaster. The Hon'ble the Finance Member says that in certain cases the level is unduly low, and in such cases the rent can be raised without any inquiry. For that you do not require any examination of the soil-classification. Nor do you require any very close analysis of the rent figures. Where you see by comparison that there is a very large difference and you feel that an increase is equitable and fair, what is the necessity of such an inquiry? It is an unnecessary waste of money.

So far as statutory tenants are concerned I think it is absolutely unnecessary to have this roster year. So far as the abatement clause is concerned, it was omitted from the Bill and no amendments have been placed on the agenda of amendments of which notice has been given by the Hon'ble the Finance Member on the subject. From that it appears that it would be altogether useless to have a machinery like that. The statutory tenant is going to have a life tenancy, i.e., his holding will come to an end after fifteen or twenty years and then there will be a new agreement between the tenant and the landlord. Thus I think no occasion will arise for enhancement or abatement. After the death of the statutory tenant there will be a new contract, and when new terms are agreed upon there will be no occasion for putting the law in operation for a considerable time, probably during the term of the tenant's tenure. I do not see how the present machinery will break down so far as the statutory tenant is concerned.

The Hon'ble the Finance Member has conceded that, so far as the occupancy tenant is concerned, if the present system continues, the courts may be able to carry on. Wherein arises the occasion or need for the roster year? I think soil-classification would not ordinarily be necessary. So far as I have been able to understand the question, there is hardly any great change in the classes of the soil within a few years, except in *bhur* and *khader* areas which lie in the alluvial *mahals*. I think *dumat* and *matiyar* do not change their character in the course of a few years. Under the Bill soil-classification is not necessary in every case. For analysis of rents it has to be borne in mind that circumstances vary between two villages which may be within the distance of a few miles. We cannot arrive at deductions of a universal application, and therefore I do not see how that analysis is of very great use or advantage.

the same class or classes of soil; if an occupancy tenant, is less than the fair and equitable rate payable by occupancy tenants for land of the same class or classes of soil; or if a statutory tenant or an heir of a statutory tenant, if less than the fair and equitable rate payable by statutory tenants for land of the same class or classes of soil; the fair and equitable rates referred to above shall be the rates specified in section 59;

(b) that the productive powers of the land held by the tenant have been increased by fluvial action or by an improvement effected during the currency of the present rent otherwise than by the agency or at the expense of the tenant; or

(c) that the area of the tenant's holding has been increased by alluvion or by the tenant's encroachments.

Pandit Govind Ballabh Pant: I move that the words "the fair and equitable rates referred to above shall be the rates specified in section 59" in sub-clause (a) of clause 53 be omitted.

Hon'ble the President: The amendment is that in sub-clause (a) of clause 53 the words "the fair and equitable rates referred to above shall be the rates specified in section 59" be omitted.

Question, that these words stand part, put and negatived.

Pandit Govind Ballabh Pant: I move that the following new sub-clause (d) to clause 53 be added:--

"that there has been a rise in the average prices of staple food crops during the currency of the present rent."

This is on the lines of the present Act, and I have taken upon myself to move an amendment on the lines of the present Act, irrespective of my views on the question.

Mr. R. Burn: I rise to oppose the proposal to restore this provision to the Bill. I think perhaps no portion of the Act has been so unsatisfactory as the provision regarding the enhancement of rent. And the most unsatisfactory part of this provision was that an enhancement could be claimed on the basis of a rise in prices. I have on my table at present the file of an appeal in a case like this. It has been investigated three times by an assistant Collector, and I must say that the decision of that appeal is still a question of great difficulty. The words were put in the Act of 1901 on the basis of a similar provision in the Bengal Act. For many years the clause luckily remained a dead letter. It is really owing to the unsatisfactory nature of the other provisions for enhancement that in recent years a great many suits have been instituted on this basis. A few years ago the Board of Revenue were so impressed by the unsatisfactory nature of the decisions of lower courts that they attempted to devise some rules which would guide their action and rules were passed by Government and have been issued. The defect in the law is that it simply says, "where there has been a rise in the average price of staple food crops", and there is no guide for the courts. I do not personally believe that there can be any guide as to how figures showing the increase in prices are to be compared in determining what enhancement is to be given. We have constantly cases in which we get a rise of 100 per cent. or 150 per cent. in the average prices since the rent under consideration was fixed. It is absolutely impossible to give

an enhancement in direct proportion to the increase in prices. The other factors concerned--increase in the cost of living and so on—are much more difficult to calculate, and I know of no satisfactory formula which lays down how much weight is to be given to the rate of increase in prices, how much to the rate of increase in the cost of living and how much to other causes. In enhancement suits filed on these grounds we have a number of factors, and we have really no safe guide by which to judge the value to be given to each. We are generally driven to examine the rate at which competition rents have increased and rely on that quite as much as on the rate of increase in prices. I hope the Council will reject this proposal as nearly as possible unanimously.

Rai Bahadur Thakur Hanuman Singh : I rise to oppose the amendment which has been moved by my honourable friend Pandit Govind Ballabh Pant, and to give support to the opposition which has been started by the honourable Senior Member of the Board of Revenue. Sir, the provision in the present tenancy law has acted very hardly upon tenants whose landlords sued them for enhancement of rent on account of rise in prices. This idea was suggested to the land lords after the great war when prices went up very high. Before that the provision of the present Rent Act to enhance rent on the basis of rise in prices was never thought of by any landlord. The result of the enhancement suits was certainly that the rent of the tenants who were sued was enhanced by about 25 per cent. Since then the prices have gone down and those tenants whose rents have been enhanced are finding it very very difficult to pay off their rents to the landlords. The prices are always rising and falling; so the rise in prices ought to be no criterion for the enhancement of rent. The grounds for the enhancement of the rent as provided in the Bill are sufficient to have the rent of a tenant enhanced if it is below the general level. Then, at the same time, there is one more factor to be considered in this connexion and that is this: with the rise in prices the cost of cultivation also increases. So the tenant does not derive as much benefit as a landlord or an outsider may think that a tenant does when the prices rise. With these few observations, I oppose the motion.

Pandit Nanak Chand : I regret to have to oppose the motion of my friend, Pandit Govind Ballabh Pant. He has not given his personal views, as to why he has moved this amendment. To my mind this amendment, if accepted, will not diminish, but increase litigation. As has already been pointed out by the Senior Member of the Board of Revenue it is very difficult to decide such cases satisfactorily because there are so many things which present difficulties. The amendment provides for enhancement of rent when there is a rise in the average prices of staple food crops during the currency of the present rent. Now, the whole phraseology of the amendment is such that it presents a number of difficulties. First of all, take the words "average prices." Now an ordinary court will feel great difficulty in arriving at what is an average price. Is the court deciding the case to take the retail prices or the wholesale prices or the prices at which the tenant has to sell his produce just after he has harvested it? Next, should he take these prices for the locality, or the district or the province? Then where is the source from which correct information about these rates can be had? Then the next thing is about staple food crops. Some courts may experience great difficulty in fixing as to

[Pandit Nanak Chand.]

what crop should be fixed as staplefood crop, and what not. The staplefood crops are different for different areas and even for various classes of people. Further, the words used in the amendment are: "prices of staplefood crops during the currency of the present rent." Now, the court is provided with no indication as to what period should be taken as the basis of calculating the average prices of staplefood crops. Even supposing the presiding officer in a revenue court fixes an arbitrary period for the purpose, how is he then to ascertain that the prices during that period have been normal? Moreover, the amendment does not take into account the rise in the cost of production. It takes no account of the wages which are paid to the labourers who work in the field as well as of the valuation of the tenant's own labour in the field, and the standard of life of the tenant. For these reasons it is extremely difficult for the courts to come to a satisfactory decision in the matter, and if the contending parties are not satisfied, there will be protracted litigation. As pointed out by the honourble the Senior Member of the Board of Revenue, a certain case, which is now on his table, was decided three times by the assistant collectors, but still the Board of Revenue find themselves in a difficult position to come to a satisfactory decision. In the circumstances I would request my friends not to press for this amendment, as it is neither in the interest of the zamindars nor in that of the tenants.

Khan Bahadur Maulvi Fasih-ud-din : It is rather a strange, but at the same time an interesting, phenomenon that the two big engines which were helping the train of the Swarajists to go uphill, are now pulling the other way and trying to take it down hill. Sir, there are only two causes for enhancing the rents. One is irrigation, and the other is the rise in prices.

As to irrigation, the law does provide for a rise in the rentals on the basis of irrigation. But as to the enhancement of rent on the basis of a rise in prices, the existing law, which is distinctly an anti-zamindar law, does provide for it for the simple reason that the framers of the law could not help the idea of allowing the zamindars to enhance their rent on the basis of a rise in prices, especially when they found that during the last half a century there was a gradual and very marked rise in the prices of food-grains in India.

Their hopes and anticipations were amply justified after a decade, when during the days of the great war there was a sudden boom in the market and the prices rose by 50 per cent. and in some cases cent. per cent. This section therefore became very useful at that time. I find that all classes of people—the traders, the Government servants and others have tried to raise their income owing to the increased cost of living, and if it were not for 'his particular section in the existing Act, the zamindars would have been thoroughly crushed and would have been nowhere. The only objection which the honourable member of the Board of Revenue has taken to this clause is that it is not workable. I submit that when I was in service I used to work it very satisfactorily. I never found any hitch in working out that clause, and since I have left service, I find that the literature on the subject, both official and non-official, has considerably increased. Every officer who is in charge of such cases will tell you that he has got as it were a rule of thumb,

by which he can work out this clause. I think that the objection taken by the Government is simply imaginary. The clause has not caused any inconvenience to any party, nor has it caused any misunderstanding on the part of any officer. For these reasons, I hope the Council will not grudge us this little privilege in regard to enhancement of rents.

Khan Bahadur Mr. Muhammad Ismail : I just want to add a word to the debate. If the honourable the Senior Member of the Board of Revenue will send for the figures from Gorakhpur and Basti, he will find that within the last three or four years hundreds of cases have been filed on the basis of a rise in statutory rents, and these suits have been very satisfactorily decided by the courts. When they come to the Board of Revenue, I am sure the latter will concur in the decisions of the lower courts. As has been pointed out by Khan Bahadur Maulvi Fasih-ud-din, there is plenty of literature available on the subject, and consequently the assistant collectors ought to find no difficulty in interpreting the clause. It is analogous to section 58 of the old Act.

Raja Indrajit Partab Bahadur Sahi : I must congratulate the mover of this amendment for putting in such a reasonable motion before the House. I think the simplest way for enhancement is on the basis of the rise of the prices of staplefood crops. This has worked very satisfactorily in these provinces and there has been no complaint. I am surprised that even after the leader of the Swaraj party has accepted this motion there are other advocates of the tenants who stand to oppose the amendment. I do not think, Sir, there can be anything more fair and reasonable for the tenants than this amendment. If there is a rise in prices, naturally the tenants should agree to enhancement. If there has been fall in prices, no court will allow an enhancement.

It has been said by the Government that it would be very difficult to work satisfactorily if this amendment is accepted by the House. But Khan Bahadur Maulvi Fasih-ud-din has served in the department and has found it working very satisfactorily. The speaker who has just preceded me has stated that hundreds of cases have been decided in the Gorakhpur district and the decisions have been upheld in appeal.

I whole-heartedly support the amendment.

Hon'ble Sir Sam O'Donnell : This proposal has been supported by a number of non-official members obviously on the ground that they think that it will yield very substantial enhancements all-round. Whether that is a reason which appeals to the honourable mover, I leave it to him to say. In our opinion, there are the strongest objections to this proposal. I will first invite the attention of the Council to the remarks on this subject of the 1924 Committee.

" Enhancement is also allowed on the ground of a rise in prices and this provision causes at least as great difficulty as that regarding enhancement on the ground of prevailing rates. It is in fact impossible to come to a satisfactory decision. The fact is that rents do not follow prices quickly or in the same ratio. A part of the increased profit from cultivation due to increase of prices ought to be and is absorbed by the tenant and there is no principle on which it can be decided how much this part should be. A second difficulty is that a small tenant, who consumes his whole produce and pays his rent from the remittances of

[Hon'ble Sir Sam O'Donnell.]

members of his family working outside, has no profit at all from rise of prices, while, on the other hand, his expenses have risen."

This system gives no logical or satisfactory criterion.

The amendment does not say in what proportion rents are to be raised when there is a certain rise in prices. I take it that the honourable member can hardly mean that rents are to be increased in proportion to the rise in prices. If that were done the enhancement would be ruinous. During the last ten years prices have risen by 100 per cent. But if rents are not to be enhanced in proportion to the rise in prices, then in what proportion are they to be raised? There is nothing whatever in the amendment on the subject. Again, Sir, I presume, it would be admitted that the rise in the cost of production must also be taken into account in determining the enhancement of rent. But it is extremely difficult to say what is the rise in the cost of production. And even if the cost of production can be ascertained, the problem is one to which there can be no logical or satisfactory answer. Take for example the following figures. The rise in prices is 64 per cent and the rise in the cost of production is 39 per cent. In what proportion should the rents be raised? Again, Sir, it was quite correctly pointed out in this dispute that the rise over a period of years may include the rise which has occurred in exceptional years. Is the court to exclude or to include those years? Khan Bahadur Maulvi Fasih-ud-din, who was a member of the 1924 Committee, who accepted the criticism of that Committee and who now supports this proposal, has told us that this system works extremely well. The facts are that until quite recently the provision in the existing Act was never worked at all, it is only in recent years that suits on this ground have been filed and they have not been satisfactorily decided. Khan Bahadur Maulvi Fasih-ud-din himself said that the courts worked on a rule of thumb, that is, the decisions of the court were entirely arbitrary and were not based on any logical or scientific principle. That is the method which he tells us is entirely satisfactory. Again, Sir, the system undoubtedly increases litigation, because the decision of the lower courts (Mr. Burn will bear me out) are not satisfactory to the higher courts and therefore the cases go back to the lower courts. Prices, no doubt, should be taken into account, but not in this way. They are taken into account in the roster-year system because a rise in prices is reflected in the rents and therefore when the roster officer or the settlement officer analyses his rents he does indirectly allow for the rise in prices. He works in a scientific manner and not in a purely haphazard and arbitrary manner.

Pandit Gobind Ballabh Pant moved with the permission of the President that in his amendment No. 78 the word "local" be inserted between the word "average" and "prices" in order to make the meaning clear.

Question, that the word "local" be inserted between the words "average" and "prices" put and agreed to.

Question put that a new clause (d), namely, "that there has been a rise in the average local prices of staple-food crops during the currency of the present rent," be added to clause 58.

*The House divided: Ayes, 58; Noes, 24.**Ayes.*

Raja Bahadur Brij Narayan Rai.
 Babu Narayan Prasad Arora.
 Babu Sangam Lal.
 Babu Mohan Lal Saksena.
 Babu Damodar Das.
 Babu Jai Narayan Chaudhri.
 Babu Bhagwati Sahai Bedar.
 Thakur Manjit Singh Rathor.
 Rai Jagdish Prasad Sahib.
 Chaudhri Jaswant Singh.
 Rai Sahib Chaudhri Sheoraj Singh.
 Lala Babu Lal.
 Thakur Shiva Narayan Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Raja Suryajal Singh.
 Lala Dhakan Lal.
 Babu Nomi Saran.
 Chaudhri Badan Singh.
 Rao Sahib Kunwar Sardar Singh.
 Thakur Sadho Singh.
 Pandit Brijnandan Prasad Misra.
 Pandit Jhanni Lal Pande.
 Lieut. Raja Durga Narayan Singh.
 Raja Narayan Pratap Singh.
 Rai Bahadur Pandit Balbhadra Prasad Tiwari.
 Pandit Sri Krishna Dutt Paliwal.
 Babu Parsidh Narayan Anand.
 Raja Sri Krishna Dutt Dube.
 Rai Sahib Babu Dip Narayan Roy.

2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
 Raja Indrajit Pratap Bahadur Sahi.
 Bhaya Hanumat Prasad Singh.
 Pandit Govind Ballabh Pant.
 Mr. Mukandi Lal.
 Babu Ram Chandra Sinha.
 Raja Shankar Sahai.
 Dr. Jaikaran Nath Misra.
 Kunwar Surendra Pratap Sahi.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Maulvi Zakur-ud-din.
 Rao Sahib Abdul Hameed Khan.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid-ur-Rahman Khan.
 Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq Husain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Munshi Siddiq Ahmad.
 Qazi Habib Ashraf.
 Raja Saiyid Ahmad Ali Khan Alvi.
 Shaikh Abdus Samad Ansari.
 Rai Bahadur Lala Mathura Prasad Mehrotra.
 Raja Shambhu Dayal.
 Raja Jagannath Bakht Singh.

Noes.

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
 Mr. G. B. Lambert.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Elliott.
 Mr. P. H. Tillard.
 Mr. H. A. Lane.
 Mr. R. L. Yorke.
 Mr. R. Burn.
 Mr. A. W. Pim.
 Mr. B. J. K. Hallows.

Mr. E. L. Norton.
 Mr. H. G. Billson.
 Mr. R. J. S. Dodd.
 Colonel A. W. R. Cochrane.
 Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenroder.
 Mr. H. David.
 Babu Khem Chand.
 Pandit Nanak Chand.
 Rai Bahadur Thakur Hanuman Singh.
 Khan Bahadur Mr. Ashiq Husain Mirza.
 Mr. Tracey Gavin Jones.

Question, that clause 53, as amended, stand part of the Bill, put and agreed to.

The Council here adjourned for lunch.

After the recess, the Deputy President took the Chair.

CLAUSE 54. '.

54. (1) Except as otherwise provided in the Northern India Grounds of abatement of rent of ex-proprietary, occupancy or statutory tenant or heir of statutory tenant. Canal and Drainage Act, 1873, or any other enactment for the time being in force, the rent of an exproprietary or occupancy tenant shall be liable to abatement on one or more of the following grounds and no others:—

(a) that the productive powers of the land held by the tenant have been decreased by any cause beyond his control during the currency of the present rent; or

(b) that the area of his holding has been decreased by diluvion or by the taking up of land for a public purpose or for a work of public utility.

Hon'ble Sir Sam O'Donnell: I beg to move that in line 5 clause 54(1) substitute a "comma" for the word "or", after the word "occupancy" add the words "or statutory," and after the word "tenant" add the words "or of an heir of a statutory tenant," and that sub-clause (2) be deleted.

The Deputy President: I think we might confine our attention to sub-clause (1).

Hon'ble Sir Sam O'Donnell: The object of this amendment is to restore the provision which was in the Bill as originally drafted allowing an application to be made by a statutory tenant for the abatement of his rent.

Now, Sir, I may anticipate criticisms by saying that I am well aware that no analogous provision is to be found in the Oudh Rent Act. I am also aware that the 1924 Committee did not propose that the right of abatement should be conceded. Nevertheless, I maintain that good reasons can be given for this amendment. At present the occupancy tenant can claim an abatement of his rent. He can do so not only at settlement, but also during the currency of a settlement. The non-occupancy tenant does not enjoy that right and it is obviously impossible that he should, because the non-occupancy tenant is a tenant-at-will, he is liable to be ejected at any time by the landlord and therefore it is useless to allow him to claim an abatement of rent. But we are now altering the position of non-occupancy tenants. In future the non-occupancy tenant will be a statutory tenant and although his interest will not be heritable save to a limited extent, as is that of the occupancy tenant, nevertheless, he will hold for long periods, twenty, thirty or it may be forty years. It appears to us that in view of the change in his position, it is reasonable that the statutory tenant should also be allowed to claim abatement of his rent. If he is not, then the protection which he will get under the Bill will not be complete. It is true that his rent will not be liable to be enhanced, save by order of a court and that the enhancements decreed will certainly be on a moderate and reasonable scale—at any rate that will be the effect of our system—and also that he cannot be ejected as long as he pays his rent. These are great gains. Even if he is not allowed the right of abatement, he will still enjoy a substantial measure of protection. Nevertheless, that protection will not be complete, he will not have that complete security of tenure which we aim at giving because he can be ejected for arrears of rent, and if the rent is excessive, if it is a rack-rent, he will be unable to pay and therefore he will be in danger of being ejected. We are not anxious to encourage frivolous or unsubstantial claims, nor are we anxious to encourage the immediate repudiation of contracts. But it will be seen that our proposal is not open to these objections. An abatement cannot be claimed too soon after the initial rent has been fixed, nor at too frequent intervals. Clause 67 (1) says that no abatement of rent shall be allowed unless the period specified in section 56(4) or such longer period as may have been agreed on, decreed or ordered has elapsed. Further, before there can be any claim to abatement, the rent must under clause 54 (1) (a), as it stands in the amendment, be so high in comparison with the fair and equitable rates, as to be excessive and under clause 65 (1) it must be largely in excess of those rates. That the rent is merely in excess of these rates

will not be a ground for an abatement. It must be largely in excess. I do not think it can be denied that cases of rack-renting do occur. That is inevitable when rents are fixed by competition. Moreover, even if the initial rent agreed on is a fair rent, it may become a rack-rent in the course of time. That would happen on a large scale if there were to be a general fall in the level of prices. We have been accustomed so long to see prices rise, that we are apt to assume that the natural course of events is for prices to rise. But, of course, there have been in the past many periods during which prices have fallen. It is impossible to say what the future course of prices in this country will be. It will depend on the course of world prices. There are economists who think that world prices will move upwards, there are others who think they will move downwards and we ought in this Bill to provide for the latter contingency. The effect of allowing abatement, will not be to encourage unnecessary claims. The rent allowed by the court will in all cases be a full rent. On the other hand, it will not be a rack-rent and, therefore, a provision for abatement will protect the interests of the tenants; it will complete the security of tenure which it is the object of the Bill to give them.

Khan Bahadur Mr. Muhammad Ismail: I am surprised that the Government have thought it fit to move this amendment. I do not know at what particular stage it dawned upon them that an abatement of this particular nature was necessary and essential. As the Hon'ble the Finance Member has observed this does not find a place in the Oudh Rent Act. There is no such condition laid down in the old Act of 1901 and to the best of my knowledge it is not found in any other Tenancy Act. Therefore, there is no justification whatsoever for moving this amendment. Apart from that, on merits, you will be pleased to consider, why a tenant who has willingly taken a land on a particular rental and has been paying it for a number of years should be allowed to go to court and apply for abatement. Apart from this there are so many difficulties that a clause of this description will not be found workable. Now that the roster has gone the tenant will have no idea as to the sanctioned rate or proper rate which ought to be paid by a statutory tenant. All that he has to fall back upon is the prevailing rate in that particular area. If you will look at clause 43 you will find that the initial rent is the rent which was agreed upon between the tenant and the landlord at the time the tenant was admitted to the occupation of the land. Now as long as this clause exists, and there is no roster system, I do not see how you can justify a clause of this description which will justify a tenant to apply for abatement on the ground of excessive rent. Therefore, I think, it will be inconsistent with the present amended sections of the Bill and it is not justified on any ground.

Khan Bahadur Maulvi Fasih-ud-din : I am sorry to say that I have to join issue with the Hon'ble the Finance Member on this subject. As has been pointed out by the honourable member from Gorakhpur the clause in question is quite an innovation. It does not exist in the Oudh Rent Act nor does it exist in the existing Act, nor in the Act of any other province. I do not know why we people should be treated worse than the zamindars and taluqdars of Oudh, and that is one very strong point in justification of the fact that this amendment should not be accepted by this Council. I need not say that we the zamindars of the

[Khan Bahadur Maulvi Fasih-ud-din.]

Agra province have already suffered very much on account of this Bill. We have lost about 70 lakhs of acres of non-occupancy area practically from our possession. That area used to be our domain. We could eject any non-occupancy tenant at our sweet will and make use of the land in any way we liked. Now what do we get? We get the rather doubtful section 40. When we have to eject a tenant and acquire the land even for self-cultivation without allowing any discretion to the collector we have to pay as much as five times the rent of the land. And then that too under many other conditions and the chief one being that if we do not cultivate it and bring it to its proper use within a stated term, we have to give up that land and we have to lose compensation that we have paid. Now compare the position that we enjoy under the existing Act and the position that we will enjoy under the new Act. I think no one can gain say and I challenge anyone to say that the position of the zamindar will not be much worse than what it is now. Well in addition to all these losses that we are suffering from this Bill we are told that we shall suffer another very serious loss in the shape of the abatement of the non-occupancy rental. Sir, I have got an amendment in my name today to delete the clause relating to the abatement of the occupancy rental which I will move very soon and I think it is rather adding insult to the injury to have this new clause about the abatement of the rents of the non-occupancy tenants. I therefore strongly oppose it.

Pandit Govind Ballabh Pant: We are not discussing clause (a) yet. I think if the amendment of the Hon'ble the Finance Member had been proposed at the beginning it would have drawn the attention of every member of this House. Suppose if the amendment which has been proposed is to be accepted by the House, I think clause (a) will have to be considered when we reach that clause.

Deputy President: Yes.

Hon'ble Sir Sam O'Donnell: Only two arguments have been advanced against this provision which I need refer to. One is that when a tenant has agreed to pay a certain amount of rent there should be no interference. In other words, the appeal is to the sanctity of contract. Well, we had a lengthy discussion on that some time ago and in the course of that discussion it was shown clearly that the sanctity of contracts is not an argument that now-a-days can be regarded as conclusive. We are not desirous of allowing abatement lightly or unnecessarily. As I have pointed out before, abatement cannot be claimed too soon after the initial rent has been fixed nor at too frequent intervals. At any rate that was our proposal. Nor are we proposing to allow abatement simply because the rent may be a little higher than the equitable rate of rent. We are only proposing that abatement should be allowed when the rent is clearly excessive. Our whole object in moving this amendment is to protect the tenant against rack-renting. Then, Sir, it is said that there are practical difficulties since the Council has now deleted the clause relating to roster-year. I agree that the deletion of this clause will make the task of the court far more difficult. Whatever system is adopted other than the roster system will impose a very heavy and difficult task on the courts. Nevertheless, we regard it as highly important that the tenant should have some remedy against

rack-renting, and I know of no other way in which he can get that protection except by a provision which allows him abatement in certain circumstances.

Question, that the amendment moved by the Hon'ble the Finance Member be inserted, put and agreed to.

Pandit Govind Ballabh Pant: I move that for sub-clause (1) (a) of clause 54, the following be substituted:—

“That there has been a fall in the average local prices of staple-food crops during the currency of the present rent.”

This has been taken out of the present Act and is a corollary to the clause adopted by the Council a few minutes ago. With the omission of the roster-year system clause (a) as it is, will be hardly workable. I regret that there was no amendment affecting this clause by the Government on the agenda paper previously.

Hon'ble Sir Sam O'Donnell: I understand that the honourable member proposes to substitute for clause 54(1) (a) as it stands a provision allowing an ex-proprietary, occupancy or statutory tenant or heir of a statutory tenant to claim abatement of rent on the ground that there has been a fall in prices during the currency of his tenure. That is the proposal I think. Of course, the arguments which have already been advanced against trying to base rents on prices, apply equally to this amendment. As I have shown, prices provide no satisfactory or logical criterion. The amendment does not say what proportion of the rent is to be reduced. Suppose there is a certain fall in prices, there is nothing to show what reduction the court is to allow. As I have shown in the case of the previous amendment, the courts will be compelled to adopt what has been described as a rule of thumb, or, in other words, an arbitrary and illogical test. I need not pursue the point further, because I think I have dealt fully with the main objections to this proposal in the debate before the lunch interval. Exactly the same objections apply to this proposal and it would be waste of time to state them again. I am sure honourable members will bear those objections in mind and I hope they will give them due weight.

Pandit Govind Ballabh Pant: I have nothing more to add.

Question put, that sub-clause (1) (a) of clause 54 stand part of the Bill.

The House divided: Ayes, 22; Noes, 52.

Ayes.

Hon'ble Sir Sam O'Donnell.

Hon'ble Lieut. Nawab Muhammad Ahmad

Sa'id Khan.

Mr. G. B. Lambert.

Mr. E. A. H. Blunt.

Ku war Jagdish Prasad.

Sir Ivo Elliott.

Mr. P. H. Tillard.

Mr. H. A. Lane.

Mr. B. L. Yorke.

Mr. B. Burn.

Mr. A. W. Pim.

Mr. B. J. K. Hallows.

Mr. E. L. Norton

Mr. H. G. Billson.

Mr. R. J. S. Dodd.

Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenroder.

Mr. H. David.

Babu Khem Chand.

Pandit Nanak Chand.

Khan Bahadur Mr. Ashiq Hussain Mirza.

Noes.

Raja Bahadur Brij Narayan Rai.
 Babu Narayan Prasad Arora.
 Babu Sangam Lal.
 Babu Mohan Lal Saksena.
 Babu Damodar Das.
 Babu Bhagwati Sahai Beder.
 Thakur Manjit Singh Rathor.
 Rai Sahib Jagdish Prasad.
 Chaudhri Jaswant Singh.
 Rai Sahib Chaudhri Sheoraj Singh.
 Lala Babu Lal.
 Thakur Shiva Narayan Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Lala Dhakan Lal.
 Babu Nemi Saran.
 Chaudhri Badan Singh.
 Rao Sahib Kunwar Sardar Singh.
 Thakur Sadho Singh.
 Pandit Brijnandan Prasad Misra.
 Lieut. Raja Durga Narayan Singh.
 Raja Narayan Pratap Singh.
 Rai Bahadur Pandit Balbhadra Prasad
 Tiwari.
 Babu Parsidh Narayan Anad.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 2nd-Lieut. Sahibzada Ravi Pratap Narayan
 Singh, Rai Bahadur.

Raja Indrajit Pratap Bahadur Sahi.
 Bhaya Hanumat Prasad Singh.
 Pandit Govind Ballabh Pant.
 Mr. Mukandi Lal.
 Babu Ram Chandra Sinha.
 Dr. Jaikaran Nath Misra.
 Rai Bahadur Thakur Mashal Singh.
 Kunwar Surendra Pratap Sahi.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Maulvi Zahur-ud-din.
 Rao Sahib Abdul Hameed Khan.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid-ur-Rahman Khan.
 Khan Bahadur Hafiz Hidayat Hussain.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq
 Hussain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Munshi Siddiq Ahmad.
 Raja Saiyid Ahmad Ali Khan Alvi.
 Shaikh Abdus Samad Ansari.
 Rai Bahadur Lala Mathura Prasad Mehrotra.
 Raja Jagannath Bakhsh Singh.

Question put, that the words "that there has been a fall in the average local prices of staple food crops during the currency of the present rent" be inserted. The House divided : Ayes, 56 ; Noes, 19.

Ayes.

Raja Bahadur Brij Narayan Rai.
 Babu Narayan Prasad Arora.
 Babu Sangam Lal.
 Babu Mohan Lal Saksena.
 Babu Damodar Das.
 Babu Bhagwati Sahai Beder.
 Thakur Manjit Singh Rathor.
 Rai Sahib Jagdish Prasad.
 Chaudhri Singh Jaswant.
 Rai Sahib Chaudhri Sheoraj Singh.
 Pandit Nanak Chand.
 Lala Babu Lal.
 Thakur Rajkumar Singh.
 Thakur Shiva Narayan Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Raja Suryopal Singh.
 Lala Dhakan Lal.
 Babu Nemi Saran.
 Chaudhri Badan Singh.
 Rao Sahib Kunwar Sardar Singh.
 Thakur Sadho Singh.
 Pandit Brijnandan Prasad Misra.
 Lieut. Raja Durga Narayan Singh.
 Raja Narayan Pratap Singh.
 Rai Bahadur Pandit Balbhadra Prasad
 Tiwari.
 Babu Parsidh Narayan Anad.
 Rai Sahib Babu Dip Narayan Roy.
 Rai Bahadur Thakur Hanuman Singh.
 2nd Lieut. Sahibzada Ravi Pratap Narayan
 Singh, Rai Bahadur.

Raja Indrajit Pratap Bahadur Sahi.
 Bhaya Hanumat Prasad Singh.
 Pandit Govind Ballabh Pant.
 Mr. Mukandi Lal.
 Babu Ram Chandra Sinha.
 Dr. Jaikaran Nath Misra.
 Rai Bahadur Thakur Mashal Singh.
 Kunwar Surendra Pratap Sahi.
 Khan Bahadur Mr. Muhammad Aslam
 Saifi.
 Maulvi Zahur-ud-din.
 Rao Sahib Abdul Hameed Khan.
 Khan Bahadur Chaudhri Amir Hasan
 Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid-ur-Rahman
 Khan.
 Khan Bahadur Hafiz Hidayat Hussain.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq
 Hussain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Mr. Ashiq Hussain Misra.
 Khan Bahadur Munshi Siddiq Ahmad.
 Raja Saiyid Ahmad Ali Khan Alvi.
 Shaikh Abdus Samad Ansari.
 Rai Bahadur Lala Mathura Prasad Meh-
 rotra.
 Raja Jagannath Bakhsh Singh.

Nees.

Hon'ble Sir Sam O'Donnell.
 Mr. G. B. Lambert.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Elliott.
 Mr. P. H. Tillard.
 Mr. H. A. Lane.
 Mr. R. L. Yorko.
 Mr. R. Burn.
 Mr. A. W. Pim.

Mr. B. J. K. Hollowes.
 Mr. E. L. Norton.
 Mr. H. G. Billson.
 Mr. R. J. S. Dodd.
 Colonel A. W. R. Cochrane.
 Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenroder.
 Mr. H. David.
 Babu Khem Chand.

Pandit Govind Ballabh Pant: Sir, I propose that as the words "statutory tenant or heirs of a statutory tenant" have already been incorporated in sub-clause (1), sub-clause (2) is superfluous and it be omitted.

Hon'ble Sir Sam O'Donnell: As it is a consequential amendment I have no objection to this omission.

Question, that sub-clause (2) of clause 54 be deleted, put and agreed to.

Question, that clause 54, as amended, stand part of the Bill, put and agreed to.

Babu Nemi Saran: I beg to move that the following clause be added after clause 54:—

"In every suit or proceeding in which a court has to determine the fair and equitable rate of rent payable to a tenant, the court shall determine such rates after local inspection at the rate generally payable by tenants of the same class for land of the same class or classes of soil."

I think that it is purely a consequential amendment. When clauses 55 to 59 have been omitted and the roster year system has been omitted, there should be some method for proceeding with suits regarding enhancement, or commutation of rents, and as in those suits courts have to determine a fair and equitable rate of rent payable by tenants of certain classes, it is very necessary that there should be a certain provision in the Bill by which such rates may be determined and it is only for the purpose of substituting a procedure by which these rates be fixed or determined that I move this amendment and this is a practice which obtains at present under Act II of 1901.

Hon'ble Sir Sam O'Donnell: It seems to me, so far as I can follow the amendment, that the honourable member simply wishes to go back to the system in the present Act, Act II of 1901, i.e., the system by which the rents are fixed according to the prevailing rate. Well, Sir, that proposal was dealt with by the committee of 1924. Act II of 1901 gives as one of the grounds for enhancement "a comparison with the prevailing rate for land of similar quality and with similar advantages in the neighbourhood." The amendment seems to me to propose a ground which is practically identical with that. The committee of 1924 pointed out that that provision has risen to great difficulties. In the first place they observe "there is no prevailing rate for occupancy or non-occupancy tenants. The old occupancy land which dates back before last settlement pays at much lower rates than the occupancy of over 20 years, which in its turn pays lower than occupancy of between 12

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and 2) years' standing. Non-occupancy of eleven years' standing is at a different level from non occupancy of one year. Moreover, the rates paid for any class of land are very difficult to ascertain owing to the prevalence of lump rents. At settlement it is only after an elaborate analysis of rents over a large tract such as pargana or tahsil that a sufficiently extensive area of a single soil class is found to give an actual rate which can be regarded as reliable and not accidental, and in the case of non occupancy land such actual rate is rarely a stable rate. The vast majority of holdings consist of mixed soil classes with a lump rent. The district court which is expected to decide enhancement suits cannot have before it the material necessary to allot to each soil its relative value, nor in the case of non-occupancy land to determine what part of the rental is stable."

Then I notice that the court has got to make local inspection. That is in accordance with the present system under which a plaintiff is expected to put in a list of exemplar fields, and the comment of the 1924 Committee on it was as follows. "The court has to inspect these together with the fields in suit which may be at a distance of many miles as it is only necessary for the exemplars to be in the same assessment circle as the fields in suit. If it considers that the exemplars do not resemble the fields in suit, the court must choose exemplars of its own. But this is difficult since the court rarely has any experience of soil classification."

We have had, Sir, over twenty-five years' experience of this method of determining rent. It has been found to be profoundly unsatisfactory. As I pointed out before, in the case of occupancy rents it would mean that the rents would be stabilized at the existing level. And that would mean that occupancy tenants would be converted in course of time into fixed-rate tenants. We know what has happened in the case of the fixed-rate tenants. We know that a fixed rate tenant is a small zamindar and that his land is continuously sub-let.

Pandit Govind Ballabh Pant : If the Hon'ble the Finance Member will kindly refer to section 59 (4) of the present Bill he will find there that the words that have been moved by my friend the honourable member for Bijnor are exactly the words contained in that sub-clause and the objections that he has urged apply not only to the present system, but also to the proposed system. So far as section 59 is concerned, it says: "In every suit or proceeding in which a court has to determine the fair and equitable rate of rent payable by a tenant, and there are no rent-rates which shall be deemed to be the sanctioned rates under sub-sections (1) to (3) of this section, the court shall determine such rates after local inspection at the rates generally payable by tenants of the same class for land of the same class or classes of soil." Now under the last amendment that was passed by the Council before it dispersed for lunch it has decided that there will be no sanctioned rent-rates under the roster system. So we are exactly in the position in which we would have been if there were no roster system and no sanctioned rates in the Bill. The present Bill provides that wherever there are no sanctioned rates there the courts shall determine such rates after local inspection at the rate generally payable by tenants of the same class for land of the same class or classes of soil.

I do not see what other feasible method can be devised. But if there is one we are prepared to adopt it in case there is any superior merit in it.

Babu Nemi Saran : I have nothing more to say.

Hon'ble Sir Sam O'Donnell : It is quite true that this provision is taken from clause 59(4) of the present Bill. What the honourable member for Naini Tal has omitted to notice is that this provision was intended to provide for a purely transitory period, i.e. to provide for the period between the passing of this Act and the passing of the roster rates. Once the roster rates have been prepared this provision ceases to be operative. It will no longer be applied. We must have some method for the determination of rents in this intervening period. We never claimed that it was a satisfactory method. We recognized that it was a profoundly unsatisfactory method. It is a purely makeshift arrangement to provide for the transitory period. As soon as the roster rates are sanctioned then this system ceases to be operative. It will never be resorted to again. Therefore there is really no force in the argument that this is taken from clause 59 (4). That is a purely temporary provision to provide for interval of time between the passing of the Act and the preparation of the roster rates.

Question put, that the amendment moved by Babu Nemi Saran stand part of the Bill.

The House divided : Ayes, 29 ; Noes, 26.

Ayes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksona.
Babu Damodar Das.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Lieut. Raja Durga Narayan Singh.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.

Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhyaya.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha
Dr. Jaikaran Nath Misra.
Rai Bahadur Thakur Mashal Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Maulvi Zabur-ud-din.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan
Rai Bahadur Lala Mathura Prasad Mehrotra.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.

Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie
Mr. M. F. T. Herchenröder.
Mr. H. David.
Babu Khem Chand.
Lala Babu Lal.
Rai Bahadur Babu Ram Nath Bhargava.
Rao Sahib Kunwar Sardar Singh.
Raja Narayan Pratap Singh.
Bhaya Hanumat Prasad Singh.
Khan Bahadur Mr. Ashiq Hussain Mirza

Hon'ble the President resumed the Chair.

Pandit Govind Ballabh Pant : There is an amendment in my name No. 116 in the supplementary notice paper. In view of the clause which has just been adopted by the Council I wish to make a slight

[Pandit Govind Ballabh Pant.]

change in the language so that it may fit in with the clause which has just been adopted. I move it as sub-clause 2 to the principal sub-clause which has just been adopted.

I beg to move that the following be added as an explanation to the sub-clause which has just been adopted by the Council on the motion of my friend Mr. Nemi Saran.

"*Explanation.*—Land of the same class or classes of soil means —

- (a) when the local area within which the land is situated has been divided by the settlement officer into circles of like capacity and soil, land of similar quality and with similar advantages, situated in the same circle;
- (b) when the said local area has not been so divided by the settlement officer, land of similar quality and with similar advantages in the same pargana or in a pargana immediately adjacent."

Having omitted the roster year system, we have to provide a machinery for the decision of suits for enhancement and abatement, and my proposal seems to be a workable method. It is in complete conformity with the existing section on the subject, and it has been tried for a considerable length of time. I hope it will be acceptable to the Council.

Mr. H. A. Lane: This is another regrettable return to obsolete methods which become necessary with the removal of the system of the roster year. The honourable member for Naini Tal has rightly said that the proposed system is the existing system, but he has wrongly said that it is workable. Every revenue officer who has attempted to decide enhancement cases by the method which is at present in force knows how difficult, if not impossible, the task is. The roster year system makes it possible for the special officer in choosing his rates to allow for changed conditions. A reasonable system obviously must make it possible to depart, if for instance canal irrigation is introduced into a considerable tract of country, from the division into assessment circles which was made at settlement. The rates which depend on the division into assessment circles made at settlement become in such circumstances unsuitable. But according to sub-clause (a) as proposed it will be necessary for the court, in deciding enhancement suits, to follow the settlement officer's division into assessment circles, even though he knows that it is obsolete and that the results which will accrue will give an entirely unfair rent for the tenant. It is unnecessary to labour the point. The present system to which it is now proposed to return is probably no worse than any other, if the roster year system is to be rejected.

Question, that the amendment moved by Pandit Govind Ballabh Pant be inserted, put and agreed to.

CLAUSE 60.

60. An occupancy tenant or an ex-proprietary tenant or a statutory tenant or the heir of a statutory tenant whose Suits for commutation, rent has heretofore been paid in kind, or on the estimated value of a portion of the crop, or by rates varying with the crop, or partly in one of such ways and partly in another or other of such ways or the landholder of such tenant may sue for the commutation of such rent to a fixed money rent.

Rai Sahib Chaudhri Sheoraj Singh: I beg to move that the following proviso be added at the end of clause 60:—

“ Provided, firstly, that no suit shall lie if it has been fixed by agreement the term of which has not expired:

Provided, secondly, that no suit shall lie in the case of statutory tenant or a sub-tenant.

Provided, thirdly, that no suit shall lie in the case of alluvial mahal or tracts in which cultivation is precarious.”

It is quite a new clause. It does not exist in the present tenancy law. Commutations can be made at the time of the settlement under the present Land Revenue Act. The provision exists in the Land Revenue amending Bill, which is going to be placed before the Council shortly. It is an innovation to permit commutations during the currency of the term of settlement. I should have moved for the deletion of the whole clause, but I have taken the most moderate course by moving my amendment. I firstly want that no suit shall lie in the case of leases the term of which has not expired, secondly in the case of statutory or sub-tenants and thirdly in the case of alluvial mahal or tracts in which cultivation is precarious. There is absolutely no reason why commutation should be allowed before the period for which an agreement had been made between the zamindar and the tenant. The statutory tenants and the sub-tenants have hitherto been tenants-at-will. When a tenant has once agreed to pay *batai* rent, it would be unjust to permit the tenant to change his rent into cash during the period of the settlement. As regards alluvial mahals and precarious tracts, it is to the benefit of the tenants that such rents should exist. This clause permits the tenants to file a suit to have their rates changed into cash but it is strange that it does not empower the zamindars to have their rates changed into grain. It is therefore a very unjust clause and it is why I have moved my amendment. I hope the Council will accept it.

Hon'ble Sir Sam O'Donnell: I must oppose this amendment. The first part of it provides that “no suit shall lie if the rent has been fixed by agreement the term of which has not expired:”. As a matter of fact I doubt very much whether there are any such agreements. If there are any, they probably relate only to unreclaimed land. We have specially provided that in the case of land which is to be reclaimed the landlord and the tenant can enter into an agreement for 14 years. Secondly, even if there are any agreements, it seems to me to be wrong that the tenant should not be allowed to apply for commutation. If he applies for commutation, he wants to have his rent fixed in cash and not in kind. He is not asking for a reduction in his rent. Crop rents, as everyone recognizes, are in general undesirable rents; in the last 30 or 40 years or more crop rents have been steadily converted into cash rents; and I believe that in most of the large progressive estates crop rents, wherever possible, have been commuted into cash rents. Crop rents are only suitable to precarious tracts. In some cases you must have a crop rent, but if the rent can be converted into a cash rent, it is very desirable that it should be. The second proviso is that no suit shall lie in the case of a statutory tenant or a sub-tenant. As a matter of fact our clause, as it stands in the Bill does not relate, so far as I can see, to a sub-tenant. But it does relate to a statutory tenant. The result of putting in this proviso will be to

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contradict directly the clause itself. You would have a clause which applies to statutory tenant and then you would have a proviso saying that this clause should not apply to a statutory tenant. That seems to be a ridiculous position. Moreover, if statutory tenants were excluded, there would be very few tenants left to apply for commutation. There may be a few occupancy tenants, but the vast majority of the tenants are statutory tenants. The third proviso says that no suit shall lie in the case of alluvial mahals or tracts in which cultivation is precarious. I invite the attention of the Council to clause 64 (2) which says: "In suits for commutation of rent the court shall also consider any plea to the effect that commutation is undesirable in view of the exceptional liability of the holding to damage by wild animals, flooding or like cause or exceptional fluctuations in the portion of the holding actually cultivated or its produce and may dismiss the suit on such ground." This clause therefore gives the court a discretion in the matter. If the court considers that on any of the grounds, for instance the exceptional liability of the holding to damage by flooding or like cause or exceptional fluctuations in the portion of the holding actually cultivated or its produce, commutation ought not to be granted, it will not do so.

Khan Bahadur Maulvi Fasih-ud-din: I am sorry that I have not been convinced by the arguments of the Hon'ble the Finance Member as regards the most sound and the most equitable motion put forward by my friend Chaudhri Sheoraj Singh. Crop rents, we will have to admit, are a very ancient institution in the Indian agriculture and before the advent of the British Government, they were the prevailing rents in India. It is since a few years only that they are being changed into cash rents. The tenants never felt that crop rents were rack-rents or that they had any idea of severity about that. The present idea that these rents are crushing rents, I think, is not at all warranted by facts. In the case of crop rents, the zamindar generally gives material help to the tenants who pay *batai*. He supplies them with ploughs, labour and irrigation, etc., and then he takes a share of the crop which generally varies between $\frac{1}{3}$ and $\frac{1}{4}$. This is the system which has been prevailing in this country since a very long time. It does not hit the tenant in the least, as in times of drought he is safe. When he gets a bumper crop, he gives a greater portion of it, and in its return he is relieved from so many other expenses. He is not to be driven to the village mahajan and pay an exorbitant rate of interest. This is the psychology of these crop rents. My friend Chaudhri Sheoraj Singh, in his first proviso does not mean to say that the agreements which are to be considered as null and void under clause 8 should not be considered as void. What he means to say is that no suit could be brought into the court for changing crop rents into cash rents if any agreement did exist and it stated the term for which they were to continue.

The second provision of his is as sound as anything. Of course, I hope that he will delete the word "sub-tenant" as that is not necessary. But in the case of statutory tenants, I think, it is but right and fair that when a statutory tenant agrees to pay a crop rent he should continue to do so. Occupancy tenants do require certain protection, and in spite of the fact that there was no provision in the existing Act about the

commutation of occupancy rents into cash rents, at least during the period of settlement, still my friend Chaudhri Sheoraj Singh has not touched that point at all and he has rather been lenient in the matter of occupancy tenant. But certainly, I think, it will be very unjust not to allow the zamindar to continue to take crop rents in the case of statutory tenants at least during the period of settlement. I think the question before us is not whether this crop rent system should be changed into cash rent, but the sole and simple question is that it should not be converted into the cash rent at least for one period of settlement. This is all we want. We do not want to attack the occupancy tenants in this respect. As to the case of alluvial mahals and precarious tracts the Hon'ble the Finance Member has admitted that crop rents are advisable in such cases, but he has quoted a certain clause in this Bill, which says that the Collector or Assistant Collector shall consider the fact, while commuting crop rent into cash rent, that the tract is subject to the ravages of wild animals and to over-flooding. That section has a different meaning from the amendment of my friend. That simply gives a discretion to the Court to consider this fact, while this particular amendment that has been brought in by my friend says that there should be no commutation during the period of one settlement in the case of alluvial mahals and precarious tracts. This, I think, is a more satisfactory and more direct provision than the vague provision that has been referred to by the Finance Member. This is a point on which we lay great stress and I think that my friend would have been within his rights if he had moved for the total deletion of this section. But somehow or other he has not thought it fit to do so and I think that this very moderate amendment that he has moved should find acceptance of this House.

Hon'ble the President: I may just invite attention of honourable members to proviso (2) in the amendment. Clause 60 gives power to statutory tenants to sue for the commutation of rents and the second proviso in the amendment takes away from him the right of such suit. The best way, if the House does not agree with the proposal, is to delete the words "or statutory tenant" from the clause because otherwise it looks very odd reading that the clause should give the right to a statutory tenant to sue and the proviso should withhold that right. That has been pointed out by the Hon'ble the Finance Member. If there is no desire to give the right to this statutory tenant, then it had better be moved in a proper form.

Dr. Shafa'at Ahmad Khan: I rise to say a few words as regards the amendment of Rai Sahib Chaudhri Sheoraj Singh. In the Rohilkhand division, especially in Moradabad and Bareilly, the *batai* system prevails to a very large extent. I consulted a number of zamindars and also tenants and I found that neither class was dissatisfied with the system; that the zamindars found it very useful and on the whole very beneficial to them, nor did I find any trace of any harm or injury to the tenants by this system. I admit that this is not a perfect principle; I admit that this has to give way later on to the commutation of rent, but I believe that that time has not yet arrived and I think, as has been pointed out by Khan Bahadur Maulvi Fasih-ud-din, that there should be some interval during which the *batai* system should prevail.

With these words I support the amendment moved by Rai Sahib Chaudhri Sheoraj Singh.

Raja Indrajit Fratap Bahadur Sahi : An amendment of practically the same nature stands in my name in today's agenda (No. 99), but I would rather support the amendment moved by my friend Rai Sahib Chaudhri Sheoraj Singh. My point is that commutation of rent which has been provided under this section is neither beneficial to zamindars nor to tenants. In the first place I must say that in places where the practice is to pay rent in kind, the zamindars are naturally more interested in the tenants having better crops and so they give every facility to them specially and make improvements in the land. In that way, the soil improves and benefits both the tenants and the landlords. Secondly, when there is no crop or there is a failure of crop, the tenant has to pay nothing as rent. At the same time it is good for the zamindars, specially those who live outside, as they have not to look after their fields so much and have nothing to do towards the collection of the rent; but as soon as the crop is ready they come and take their share out of the produce. The amendment which has been just moved is to the advantage of both the parties and makes the position better. Under the circumstances I hope the House will adopt the amendment.

Mr. R. Burn : The honourable and learned professor who spoke on this section has said that zamindars and tenants are perfectly satisfied with the present position. But I would point out that clause 60 is merely an enabling section, under which any occupancy tenants who are not satisfied with the position may come up and ask for commutation. My friend the Hon'ble the Raja of Tamkahi did not see any benefit at all to the zamindar from commutation. Well, in one aspect I am a zamindar myself, and during the last five or six years, I have had to do with commuting rents in something like 1,000 or 1,200 villages in the north of Oudh. These commutations had to be carried out, not through a court, but by negotiations with the tenants, and the rents have been fixed in that tract entirely by consent, and I can assure him that the result has been a cash benefit to the zamindar. In the old days, a great many of the villages were let out to thekaders and the estate officials had no means of ascertaining exactly how much the thekaders were making and the rent fixed for the thekaders was a matter more or less of guess; when we had got cash rents we knew more exactly what the thekaders were getting and we were able to fix a certain percentage of that as remuneration to the thekaders, and the result has been a cash gain to the estates without any hardship at all to the tenants.

Rai Sahib Lala Jagdish Prasad : To remove the inconsistency I rise to move an amendment.

I beg to move that proviso (2) of the amendment which has just been moved be omitted and that the following words in the second and third lines of the existing clause be omitted:—"or a statutory tenant or the heir of a statutory tenant."

I think I need not say many words in support of my amendment, as it is meant simply to remove an inconsistency. But I wish to support the amendment of my honourable friend Rai Sahib Chaudhri Sheoraj Singh as amended by me. I consider that the method of paying crop rents is a most natural method. If a tenant has a bumper crop, he has to pay proportionately more rent in kind and if he has a poor crop then he has to pay proportionately less rent. So to my mind, it is a most

natural method and should not cause hardship to anybody. It is only fair therefore, that no suit should lie in the case of such crop rents as have been fixed by agreement until the term of such agreements expires. As regards statutory tenants, as we are now conceding life tenure we must provide that statutory tenants should not be able to apply for commutation of crop rents into money rents without the consent of the landlord. As regards proviso (3), I think it is necessary that in the case of alluvial mahals commutations should not be allowed. With these words I support the amendment as amended by me.

Hon'ble the President: Is there any objection to Rai Sahib Lala Jagdish Prasad's amendment being taken?

No objection being raised, the amendment was allowed to be moved.

Rai Bahadur Thakur Hanuman Singh: In certain places crop rents are surely advantageous to the zamindars, but not always. Big landlords are always losers on account of crop rents. Khan Bahadur Maulvi Fasih-ud-din, who has spoken in support of the amendment, has said, that the system of crop rents is coming down from old times.

In olden times, it must have been very very profitable both to the landlords and the tenants, when the population was much smaller than it is at present, and the land was available to be cultivated on any large scale as the tenants might desire. The landlord who used to get a portion of the produce when land was cultivated was more benefited than when it lay fallow.

At present the demand for land is very great so it is very necessary that it should be held by tenants who take proper care for its cultivation and to increase its produce. It is my experience that the produce of the lands which pay crop rental is not so great as of the lands which pay cash rent, because the tenants do not pay so much attention as when the rent is paid in cash. There may be a system in the district from which my honourable friend Khan Bahadur Maulvi Fasih-ud-din comes that the landlords give help to the tenants who pay their rent in kind, but in the eastern part of the province and in Oudh there is no such custom or practice. As regards statutory tenants I think their status has now come to be next to that of the occupancy tenants. There is no reason why occupancy tenants should be allowed to have their crop rent commuted to cash rent and not the statutory tenants. Dr. Shafa'at Ahmad Khan Sahib has said that in the Bareilly division both the landlords and the tenants are contented with the crop rent. Well, if they are contented then the question does not arise for commutation there. I think it will be very very profitable to the landlords if the crop rental be commuted to cash rent in alluvial and sparsely cultivated portion of districts, because in that case the landlord will never lose. If there will be any occasion for loss, it will be to the cultivator and not to the landlord. In alluvial mahals there are lands which give excellent crops. I think most of the members of this House do not exactly know what alluvial mahals are and how productive the land is there.

A voice :—We know.

Rai Bahadur Thakur Hanuman Singh: I doubt it. Some times and in some places these alluvial mahals are very, very fertile and produce bumper crops, but where land is sandy the landlord has to give remissions for the portion which cannot be cultivated. This amendment

[Rai Bahadur Thakur Hanuman Singh.]

which has been moved should not be accepted by the House because in certain cases the tenants will be losers and in some cases the landlords too.

I therefore think that the provision which has been embodied in the Bill is very useful and it should be allowed to become law without any amendment.

Pandit Nanak Chand : I know that sometimes cash rents are advantageous both to the zamindar and the tenants. If they are advantageous to both parties, then no tenant would ever care to bring a suit under this clause. But there might be cases in which the tenant might enter into an agreement whereby he might agree to pay his rent in kind and as a matter of fact he might be forced to enter into that agreement because he might not easily get land elsewhere except on that condition. In such cases, where the terms of an agreement are operating harshly on the tenant, he should be given the option to get it commuted into cash. If the chief argument of my friends who have supported this amendment is that the cash rentals are not always profitable to the tenant, but that rents in kind are advantageous to him, then there will be no difficulty. I know, Sir, that cash rentals in themselves are not an unmixed good. A friend informs me that, recently, the Court of Wards in the Balrampur estate commuted rents in kind to rents in cash and I understand the result of this has been that since introduction of cash rents, the arrears have begun to accumulate and the tenants find it difficult to clear them off. Had the tenants been allowed to judge for themselves whether cash rentals or rents in kind suited their convenience, there would have been no difficulty. It is certainly not in the interests either of the zamindars or of the tenants that anything should be forced on the latter which they do not consider to be useful to them. In certain cases rents in kind may cause great hardship and the tenant may not be left free to cultivate crops which he considers beneficial. For example, if a tenant living in the neighbourhood of a town thinks that he can make a better use of the land he has, by cultivating what are known as garden crops, I can imagine the difficulties which the zamindar will have to meet to get a division made every morning of the vegetables that are grown by his tenant. Sometimes the tenant might prefer to raise costly crops like the sugarcane, but he may be deterred by the idea that he will not be allowed to retain the entire fruit of his labour and that he will have to divide the produce of his hard labour between himself and the zamindar. He may not be willing to divide such a valuable crop. In such cases he will be restricted to raising only those crops which he has agreed to raise according to the terms of the agreement. I have seen many such agreements whereby it is agreed that the tenant will have to grow a certain amount of indigo and supply it to the zamindar for the manufacture of indigo.

Hon'ble the President : That is an obsolete crop now.

Pandit Nanak Chand : I wanted to point out that there might be . . .

Hon'ble the President : Whatever the honourable member wanted, to say let him say what he wants to.

Pandit Nanak Chand : It is possible that the rent in kind is specified to be in the shape of wheat or gram and soon agreements of this nature will act as an unnecessary restriction on the freedom of the tenant to cultivate any crop that he likes and which he may consider it to be to his advantage to cultivate. I think that in such cases if the tenant finds that the rent in kind is not to his advantage he should be given this option. But I just want to assure my friends of the zamindar party that if it is their contention that in some cases at least the rents in kind are advantageous to both the zamindars and the tenants, then I am sure the tenants will not in such cases come forward with a suit under this clause. It is only an enabling clause and there should be no objection to permitting the tenant to file a suit if he considers it to his advantage.

Rai Sahib Chaudhri Sheoraj Singh. I do not like to take much time of the Council because my amendment has been fully discussed and supported by my honourable friends. Sir, I did not mean that all those agreements entered into before the enforcement of this Act, should become void if my first proviso is accepted. What I mean to say was that just after the enforcement of this Act every tenant who may be in possession of land would acquire statutory rights on the same rent which he had been paying to the zamindar before the enforcement of this Act whether the land was held on *batai* or whether he was paying rent in kind or in cash. So what I mean to say was that the agreements which had been made between a tenant and a zamindar before the enforcement of this Act should remain valid as regards rent. I do think that my friends Pandit Nanak Chand and E. B. Thakur Hanuman Singh have opposed my amendment on practical experience. It seems to me that they have no experience at all about agriculture.

Rai Bahadur Thakur Hanuman Singh : I have my life-long experience.

Rai Sahib Chaudhri Sheoraj Singh ; They do not seem to be in touch either with zamindars or with tenants. My friend Khan Bahadur Maulvi Fasih-ud-din has rightly pointed out that *batai* system is not a new system. It is a very old system and tenants are fully aware of it. So when they are fully aware they are in a better position to judge as to whether this *batai* system will be beneficial to them or not and when they agree to it they agree to it after full consideration and they have this system from year to year. So, when they have once agreed to it there is no reason why they should be permitted to have commutation during the currency of the term of settlement.

With these words I press my amendment.

Hon'ble Sir Sam O'Donnell : Several of my Muhammadan friends have dilated on the great merits of crop rents. May I remind them of a proverb attributed, I believe, to a great Muhammadan ruler, viz.,

Batai lutai kankut tadash-i-langot bandha jama khud ast.

May I also remind them that one of the main objects of the settlements of the great Emperor Akbar was the commutation of crop rents into cash rents. It was recognized, Sir, even centuries ago that crop rents in general are undesirable. They are in fact a relic of a primitive state of affairs. They may be necessary, they undoubtedly are still

[Hon'ble Sir Sam O'Donnell.]

necessary in certain precarious tracts. If they are really necessary and suitable the courts will not grant applications for commutation. Khan Bahadur Maulvi Fasih-ud-din said that they did not intend that their amendment should apply to occupancy tenants. There are probably not many occupancy tenants holding land on crop rents and therefore the tenants as a class might be inclined to say to him "thank you for nothing." But, Sir, in any case, what about the sanctity of contract? If all contracts are to be treated as sacrosanct, why should an exception be made in the case of occupancy tenants?

As several honourable members, Sir, have pointed out, this clause is simply an enabling clause; it simply gives the tenant the option of applying, so if crop rents are to his benefit he will not apply but if they are not to his benefit why should he be prevented from applying for and obtaining commutation. I cannot see that the just interests of landlords will in any way be prejudiced, if he is allowed to do so. After all, commutation means in essence the substitution of a fixed and certain rent for one which is uncertain and variable.

Hon'ble the President: The question is that at the end of clause 60 the following proviso be added:—

"Provided, firstly, that no suit shall lie if it has been fixed by agreement the term of which has not expired;

"Provided, secondly, that no suit shall lie in the case of statutory tenants, heirs of statutory tenants or a sub-tenant:

"Provided, thirdly, that no suit shall lie in the case of alluvial mahal or tracts in which cultivation is precarious."

Since when an amendment has been moved to the effect that the and the second part of the words "or a statutory tenant or the heir of statutory tenant" in second 60 proviso be deleted.

Question put, that the words "or a statutory tenant or the heir of a statutory tenant" and the second part of the proposed, proviso, stand part.

The House divided: Ayes, 42; Noes, 38.

Ayes.

Hon'ble Sir Sam. O'Donnell.

Hon'ble Lieut. Nawab Muhammad Ahmal

Sa'id Khan.

Mr. G. B. Lambert.

Mr. E. A. H. Blunt.

Kunwar Jagdish Prasad.

Sir Ivo Elliot.

Mr. P. H. Tillard.

Mr. H. A. Lane.

Mr. R. L. Yorke.

Mr. R. Burn.

Mr. A. W. Pim

Mr. B. J. K. Hallows.

Mr. E. L. Norton.

Mr. H. G. Billson.

Mr. R. J. S. Dodd.

Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenroder.

Mr. H. David.

Babu Khem Chand.

Babu Narayan Prasad Arora.

Babu Sangam Lal.

Babu Mohan Lal Saksena.

Babu Bhagwati Sahai Bedar.

Thakur Manjit Singh Rathor.

Pandit Nanak Chand.

Thakur Shiva Narayan Singh.

Lala Dhakan Lal.

Babu Nemi Saran.

Chaudhri Badan Singh.

Thakur Sadho Singh.

Pandit Brijnandan Prasad Misra.

Pandit Jhanni Lal Pande.

Pandit Sri Krishna Dutt Paliwal.

Pandit Yajna Narayan Upadhya.

Rai Bahadur Thakur Hanuman Singh.

Pandit Govind Ballabh Pant.

Mr. Mukandi Lal.

Babu Ram Chandra Sinha.

Dr. Jaikaran Nath Misra.

Maulvi Z. Nur-ud-din.

Mr. Tracey Gavin Jones.

Noes,

Raja Bahadur Brij Narayan Rai.
 Rai Jagdish Prasad Sahib.
 Chaudhri Jaswant Singh.
 Rai Sahib Chaudhri Sheoraj Singh.
 Lala Babu Lal.
 Thakur Rajkumar Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Raja Suryaaji Singh.
 Lala Dhakan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Lieut. Raja Durga Narayan Singh.
 Raja Narayan Pratap Singh.
 Rai Bahadur Pandit Balbhadra Prasad Tiwari.
 Rai Sahib Bibu Dip Narayan Roy.
 2nd Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
 Raja Indrajit Pratap Bahadur Sahi.
 Bhaya Hanumat Prasad Singh.
 Raja Shankar Sahai.
 Rai Bahadur Thakur Mashal Singh.
 Kunwar Surendra Pratap Sahi.

Khan Bahadur Mr. Muhammad Aslam Saifi.
 Rao Sahib Abdul Hameed Khan.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Mdulvi Muhammad Obaid-ur Rahman Khan.
 Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq Hussain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Mr. Ashiq Husain Mirza.
 Khan Bahadur Munshi Siddiq Ahmad.
 Shaikh Abdus Samad Ansari.
 Rai Bahadur Lala Mathura Prasad Mehrotra.
 Raja Shambhu Dayal.
 Raja Jagannath Bakhs Singh.

Question put, that the above proviso be added to section 60.

The House divided: Ayes, 38; Noes, 44.

Ayes.

Raja Bahadur Brij Narayan Rai.
 Rai Jagdish Prasad Sahib.
 Chaudhri Jaswant Singh.
 Rai Sahib Chaudhri Sheoraj Singh.
 Lala Babu Lal.
 Thakur Rajkumar Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Raja Suryaaji Singh.
 Lala Dhakan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Lieut. Raja Durga Narayan Singh.
 Raja Narayan Pratap Singh.
 Rai Bahadur Pandit Balbhadra Prasad Tiwari.
 Rai Sahib Babu Dip Narayan Roy.
 2nd Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
 Raja Indrajit Pratap Bahadur Sahi.
 Bhaya Hanumat Prasad Singh.
 Raja Shankar Sahai.

Rai Bahadur Thakur Mashal Singh.
 Kunwar Surendra Pratap Sahi.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Rao Sahib Abdul Hameed Khan.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid-ur-Rahman Khan.
 Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq Husain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Mr. Ashiq Husain Mirza.
 Khan Bahadur Munshi Siddiq Ahmad.
 Shaikh Abdus Samad Ansari.
 Rai Bahadur Lala Mathura Prasad Mehrotra.
 Raja Shambhu Dayal.
 Raja Jagannath Bakhs Singh.

Noes.

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
 Mr. G. B. Lambert.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Ellicott.
 Mr. P. H. Fillard.
 Mr. H. A. Lane.
 Mr. R. L. Yorke.
 Mr. R. Burn.
 Mr. A. W. Pim.
 Mr. B. J. K. Hallows.
 Mr. E. L. Norton.
 Mr. H. G. Billson.
 Mr. R. J. S. Dodd.
 Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenröder.
 Mr. H. David.
 Babu Khem Chand.
 Babu Narayan Prasad Arora.
 Babu Sangam Lal.
 Babu Mohan Lal Saksona.
 Babu Damodar Das.
 Babu Bhagwati Sahai Bedar.
 Thakur Manjit Singh Rathor.
 Pandit Nanak Chand.
 Thakur Shiva Narayan Singh.
 Rai Bahadur Pandit Kharagjit Misra.
 Babu Nemi Saran.
 Chaudhri Radan Singh.
 Thakur Sadho Singh.
 Pandit Brijnandan Prasad Misra.

Notes.

Pandit Jhanni Lal Pande.
 Pandit Sri Krishna Dutt Paliwal.
 Babu Parsidh Narayan Anad.
 Pandit Yajna Narayan Upadhyas.
 Rai Bahadur Thakur Hanuman Singh.
 Pandit Govind Ballabh Pant.

Mr. Mukandi Lal.
 Babu Ram Chandra Sinha.
 Dr. Jaikaran Nath Misra.
 Maulvi Zahur-ud-din
 Mr. Tracey Gavin Jones.

Bhaya Hanumat Prasad Singh : I rise to move that the following proviso be added at the end of clause 60:—"Provided that no suit for commutation of rent shall be brought in cases of *jarhan* and *baro* crops without the consent of the tenant and the landholder both."

The nature of these two crops is such as they require much water rather they depend chiefly on rainfall. When there is heavy rainfall the produce of these two crops is quite good, but with its failure they suffer very badly. No artificial method of a less costly nature can help these two crops when there is failure of rain. Now, I submit, Sir, that with the failure of these crops both the zamindars and the tenants are put to much difficulty. The zamindars encounter difficulty in realizing their rent and the tenants find themselves in great embarrassment in paying it in cash. If there is *batai* with regard to these two crops it would be beneficial both to the zamindars as well as to the tenants. Each of them will have his due share both when the produce of these crops is either good or bad. Thus what naturally follows, Sir, is that none of the parties will be hit hard by the failure of these crops due to the scarcity of rain. My friends, who might be aware of the condition of affairs in Tarai districts, for example Gorakhpur, Basti, Gonda, and other districts, will be knowing fully well that these crops are such as with regard to them cash rent is not always possible. With these few words I commend this motion for the acceptance of this House. I need not add many words because it is a simple and innocent proposal.

Mr. R. Burn : I rise to oppose this amendment mainly on the ground that it is far too rigid. Even in the district to which the honourable member belongs there is an area of 55,000 acres of *jarhan* which is absolutely secured against fluctuations by canals, private canal systems belonging to a number of zamindars of the total length of something like 200 miles. In other tracts where *jarhan* is generally grown the crops may be comparatively secured by means of bunds and other means. It is not a question of expression of opinion on which some members of the House have been doubtful but we have been successful, as I said at an earlier stage this afternoon, in Gonda and Bahraich districts in arranging commutation with the consent of tenants in respect of grain rents. The case of *boro* is different. It is generally grown, as far as my experience goes, on the edge of *jhils* or small streams, and it is sufficiently covered by clause 64(2), which directs the courts to consider any plea to the effect that commutation is undesirable in view of the exceptional liability of the holding to damage by wild animals, flooding or exceptional fluctuations in the portion of the holding actually cultivated or its produce. That clause, I submit, would amply protect the zamindar in any tract where fluctuations are exceptional.

Bhaya Hanumat Prasad Singh : In view of the explanation given by Mr. Burn, I beg to withdraw my amendment.

Amendment by leave withdrawn.

Question, that clause 60 stand part of the Bill, put and agreed to.

CLAUSE 61.

61. (1) Any suit for enhancement abatement or commutation of rent may be instituted in any year not earlier than the first day of July nor later than the thirtieth day of September.

Time for instituting suits for enhancement, etc.

(2) Notwithstanding anything in this section, while a local area is under settlement, no suit for enhancement, abatement or commutation of rent shall be maintainable under this Act until the time for making applications to the settlement officer under section 87 of the United Provinces Land Revenue Act, 1901, has passed.

(3) If a special officer has been appointed to a district or local area for the determination of fair and equitable rates and has been empowered under section 57 to decide suits for enhancement, abatement or commutation of rent, such suits may be instituted in his court within such period as may be fixed by him with the sanction of the Board.

Babu Nemi Saran : I beg to move that sub-clause (3) of clause 61 be deleted. It is a consequential amendment in view of the deletion of clause 57.

Amendment put and agreed to.

Question, that clause 61, as amended, stand part of the Bill, put and agreed to.

CLAUSE 62.

Question, that clause 62, stand part of the Bill, put and agreed to.

CLAUSE 63.

63. In decreeing an enhancement of the rent of an ex-proprietary, occupancy or statutory tenant or heir of a statutory tenant, if the enhancement is not less than one-fourth of the rent, and if the court considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the tenant, the court may direct that the enhancement shall take effect by yearly increments extending over any number of years not exceeding five.

Progressive enhancements.

Khan Bahadur Maulvi Fasih-ud-din : I beg to move that clause 63 be deleted.

This clause says that if the enhancement is more than 25 per cent. then progressive enhancements of rent should be allowed in a certain manner. In view of the fact that we have agreed that the maximum amount of enhancement should be 25 per cent. clause 63 becomes *ipso facto* unnecessary.

Hon'ble Sir Sam O'Donnell : It seems to me that this is a very unreasonable proposal. The clause says that if the enhancement is not less than one-fourth of the rent and if the court considers that the immediate enforcement of the decree to its full extent will be attended

[Hon'ble Sir Sam O'Donnell.]

with hardship to the tenant, the court may direct that the enhancement shall take effect by yearly increments extending over any number of years not exceeding five. As a matter of fact even in the present Act there is section 46, which says that in decreeing an enhancement of the rent, if the enhancement is not less than one-fourth of the rent and if the court considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the tenant, the court may direct that the enhancement shall take effect by yearly increments extending over any number of years not exceeding five. Honourable members will observe that clause 63 definitely lays down that the court must consider that the immediate enforcement of the decree to its full extent will be attended with hardship to the tenant before it can direct that the enhancement shall take effect by yearly increments. Well, Sir, if it would be attended with hardship to the tenant, why does the honourable member wish that the decree should be enforced without allowing progressive enhancements? If there is no hardship, then the court will not decree progressive enhancements, but if there is hardship, it is right and fair that the enhancement should take effect by yearly increments extending over a period of five years.

Khan Bahadur Maulvi Fasih-ud din : I still hold that my amendment is a most reasonable one that I could think of. Clause 63 says that if the enhancement is not less than one-fourth of the rent and if the court considers that the immediate enforcement of the decree will cause hardship to the tenant, then it will allow progressive enhancement. But as we now stand there will be no enhancement on the tenant beyond 25 per cent. and consequently the clause becomes automatically unnecessary. If the clause had contained the words "if the enhancement is not more than 25 per cent. and if the court finds that the enhancement will result in a hardship to the tenant," then the arguments advanced by the Hon'ble the Finance Member would have held good. But the essential condition for progressive enhancement according to the scheme of this clause is that rent should not be more than 25 per cent. of the existing rent. So I think that if we have at all to retain the clause about the limit of enhancement being 25 per cent. then this clause becomes useless, and for this reason I press my motion to a division.

Hon'ble Sir Sam O'Donnell : I fail to follow the honourable member's argument. He says that now that the maximum limit of enhancement has been fixed at 25 per cent. this clause become unnecessary. Why should it become unnecessary? The enhancement might be the maximum, i.e., 25 per cent. and in that case, if the court considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the tenant, why should not the court be allowed to decree progressive enhancements? Moreover, under clause 50 (2) we have a provision to the effect that the rent fixed shall in no case be less than half the annual rental value. A tenant might be holding at a very low rent and the sudden enhancement of his rent up to half the annual rental value would then cause hardship.

Question put, that clause 63, stand part of the Bill.

*The House divided: Ayes, 46; Noes, 33.**Ayes.*

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut. Nawab Muhammad Ahmad
 Sa'id Khan.
 Hon'ble Rai Rajeshwar Bali.
 Hon'ble Thakur Rajendra Singh.
 Hon'ble Nawab Muhammad Yusuf.
 Mr. G. B. Lambert.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Elliott.
 Mr. P. H. Tillard.
 Mr. H. A. Line.
 Mr. E. L. Yorke.
 Mr. R. Burn.
 Mr. A. W. Pim.
 Mr. B. J. K. Hallows.
 Mr. E. L. Norton.
 Mr. H. G. Billson.
 Mr. R. J. S. Dodd.
 Colonel A. W. R. Cochrane.
 Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenroder.
 Mr. H. David.
 Babu Khem Chand.

Babu Narayan Prasad Arora.
 Babu Sangam Lal.
 Babu Mohan Lal Saksena.
 Babu Damodar Das.
 Babu Bhagwa'i Sahai Bedar.
 Thakur Manjit Singh Rathor.
 Pandit Nanak Chand.
 Thakur Shiva Narayan Singh.
 Babu Nemi Saran.
 Chaudhri Badan Singh.
 Thakur Sadho Singh.
 Pandit Brijnandan Prasad Misra.
 Pandit Jhanni Lal Pando.
 Pandit Sri Krishna Dutt Faliwal.
 Babu Parsidh Narayan Anad.
 Pandit Yajna Narayan Upadhyay.
 Rai Bahadur Thakur Hanuman Singh.
 Pandit Govind Ballabh Pant.
 Mr. Mukandi Lal.
 Babu Ram Chandra Sinha.
 Dr. Jaikaran Nath Misra.
 Maulvi Zahur-ud-din.
 Mr. Tracey Gavin Jones.

Noes.

Raja Bahadur Brij Narayan Rai.
 Rai Jagdish Prasad Sahib.
 Chaudhri Jaswant Singh.
 Rai Sahib Chaudhri Sheoraj Singh.
 Thakur Rajkumar Singh.
 Rai Amba Prasad Sahib.
 Raja Suryopal Singh.
 Lala Dhukan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Raja Narayan Pratap Singh.
 Rai Bahadur Pandit Balbhadra Prasad
 Tiwari
 Rai Sahib Babu Dip Narayan Roy.
 2nd Lieut. Sahibzada Ravi Pratap Narayan
 Singh, Rai Bahadur.
 Raja Indrajit Pratap Bahadur Sahi.
 Raja Shankar Sahai.
 Rai Bahadur Thakur Mashal Singh.

Kunwar Surendra Pratap Sahi.
 Khan Bahadur Mr. Muhammad Aslam Saifi
 Rao Sahib Abdul Hameed Khan.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan
 Maulvi Muhammad Obaid-ur Rahman Khan.
 Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafiat Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq
 Husain.
 Khan Bahadur Maulvi Fasih-ud-din
 Khan Bahadur Hakim Mabbub Ali Khan.
 Khan Bahadur Munshi Siddiq Ahmad.
 Shaikh Abdus Samad Ansari
 Rai Bahadur Lala Mathura Prasad Mehrotra
 Raja Shambhu Dayal.
 Raja Jagannath Baksh Singh.

Rai Sahib Lala Jagdish Prasad: I move that in the last line of clause 63 for the word "five" the word "three" be substituted. Now that we have agreed that the percentage of enhancement should be restricted to one-fourth, I suppose the House will agree to the proposal that the progressive enhancements should not extend beyond three years.

Pandit Govind Ballabh Pant: I agree with the honourable mover. Now that we have reduced the limit of enhancement it logically follows that progressive enhancements should not extend beyond three years.

Hon'ble Sir Sam O'Donnell: I do not think the difference is of very great importance.

Question, that the word "five" stand part of the clause, put and negatived.

Question, that for "five" so deleted "three" be inserted, put and agreed to.

Rai Badadur Thakur Hanuman Singh : I beg to move that in line 4 of section 63 the words "not less than" be omitted. This amendment does not require any lengthy speech from me. The highest limit of the enhancement has been fixed as one-fourth of the existing rent. These words are therefore not necessary.

Hon'ble Sir Sam O'Donnell : I think the honourable member has forgotten the provisions of 50(2) which I quoted before. It is true that the maximum limit of enhancement is 25 per cent. but, there is also a provision "that the rent fixed shall in no case be less than half the annual rental value" of land of a similar class. It is possible that the enhancement might exceed 25 per cent. under this proviso. The words "not less than" are therefore necessary.

Amendment, by leave, withdrawn.

Question, that clause 63, as amended, stand part of the Bill, put and agreed to.

CLAUSE 64.

64. (1) In all suits for enhancement or commutation of rent the court shall determine the rents in accordance with the sanctioned rates and records, unless for special reasons to be recorded the court sees reason to depart from them.

(2) In suits for commutation of rent the court shall also consider any plea to the effect that commutation is undesirable in view of the exceptional liability of the holding to damage by wild animals, flooding or like cause, or exceptional fluctuations in the portion of the holding actually cultivated or its produce, and may dismiss the suit on such ground.

Pandit Govind Ballabh Pant : I have to move a consequential amendment to sub-clause (1) of clause 64. I propose that after the words "in accordance with" the rest of the sentence be omitted and in its place the following be substituted :—

"Fair and equitable rates of rent payable by tenants of the same class for land of the same class or classes of soil determined in accordance with the procedure hereinbefore laid down."

Question, that these words be inserted, put and agreed to.

Question, that clause 64, as amended, stand part of the Bill, put and agreed to.

CLAUSE 65.

65. (1) In suits for abatement of rent on the ground mentioned in section 54 (1)(a), where the rate of rent is largely in excess of the sanctioned rate, the court may in its discretion make such abatement on this account as may appear reasonable to the court, having regard to all the circumstances.

(2) In suits for abatement of rent on the grounds mentioned in section 54 (1)(b) and (c), and section 54 (2) (a) and (b), the court shall ordinarily decree the abatement with reference to the existing rent and the extent of the decrease in the productive powers or the area of holding :

Provided that, notwithstanding anything in the section, the rent so fixed by abatement shall not be less than the valuation of the holding made at assessment of the revenue for the purpose of calculating the assets.

Pandit Govind Ballabh Pant: I beg to move that sub-clause (1) of clause 65 be deleted. This is only a consequential amendment.

Question, that sub-clause (1) of clause 65, stand part of the Bill, put and negatived.

Pandit Govind Ballabh Pant: I move that from sub-clause (2) of clause 65 the words "and section 54 (2) (a) and (b)" be omitted.

Question, that in sub-clause (2) of clause 65 the words "and section 54 (a) and (b)", stand part of the Bill, put and negatived.

Question, that clause 65, as amended, stand part of the Bill, put and agreed to.

CLAUSE 66.

66. (1) Every decree or registered agreement for enhancement of rent shall take effect from the commencement of the agricultural year next following that in which the suit was instituted or the agreement was registered:

Decree when to take effect.
Provided that where under the provisions of this Act such rent is not liable to enhancement till the end of a period which expires subsequently to the commencement of such next following agricultural year, the decree or agreement shall take effect from the commencement of the agricultural year in which the rent will be liable to enhancement.

(2) Every decree or registered agreement for abatement of rent shall take effect from the commencement of the agricultural year in which the suit was instituted or the agreement made, unless in the case of a decree the court for some reason to be recorded directs, or unless in the case of a registered agreement the agreement provides that it shall take effect from some later date.

Rai Sahib Lala Jagdish Prasad: I think I will be able to make my meaning clearer if I am allowed to move my amendments Nos. 248 and 249 together and then you can put them to vote separately.

Hon'ble the President: The honourable member can move his amendments together.

Rai Sahib Lala Jagdish Prasad: I move that in clause 66(1) the colon in line 5 be substituted by a comma and the following words be added:

"Unless in the case of a registered agreement the agreement provides that it shall take effect from some earlier date."

And in clause 66(2) in line 3 between the words "agricultural year" and "in which" the words "next following that" be inserted and in the last line for the word "later" the word "earlier" be substituted.

If you will look at clause 66 you will find that there is a disparity between sub-clauses (1) and (2). Sub-clause (1) reads "Every decree or registered agreement for enhancement of rent shall take effect from the commencement of the agricultural year next following that in which the suit was instituted or the agreement was registered." Sub-clause (2) reads "every decree or registered agreement for abatement of rent

[Rai Sahib Lala Jagdish Prasad.]

shall take effect from the commencement of the agricultural year in which the suit was instituted or the agreement made, unless in the case of a decree the court for some reason to be recorded directs, or unless in the case of a registered agreement the agreement provides that it shall take effect from some later date." The object of my amendment is that both these sub-clauses ought to be brought on the same footing, that is to say, both in the case of enhancement and abatement of rent, enhancement or abatement should take effect from the commencement of the agricultural year next following that in which the suit was instituted, or unless in the case of a registered agreement the agreement provided that it should take effect from some earlier date.

With these words I commend my amendment to the acceptance of the House.

Mr. R. Burn: I rise to oppose this amendment. The honourable mover wishes to allow an enhancement by a registered agreement to take place at once or it might be even retrospectively. His motion covers the case where the agreement provides that it should take effect from some earlier date, it might be a year or two earlier. If the honourable member keeps the proviso as it stands and also puts in his amendment, it appears to me that there will be a grave contradiction. In any case such a proposal would lead to great confusion in the patwari papers in arranging for a change like this during the agricultural year, or even in previous years. It might involve calculating fractions of instalments. If the amendment is that enhanced rents were to take effect from the beginning of the year in which the agreement was registered there would not be so much objection. But even where there has been an agreement it is always better not to make the enhancement retrospective. The case of abatement is quite different. The probability is that where an agreement is made for abatement the tenant has not paid his arrears of rent and the position there is that the landlord is simply accepting for the past year less rent than he was legally entitled to.

For these reasons I oppose the amendment.

Rai Sahib Lala Jagdish Prasad: My object simply is that cases of enhancement and abatement of rent should both be governed on the same lines, and if the Senior Member of the Board of Revenue is not agreeable to my proposal then he might put forward some other proposal by which both these classes of cases could be brought on the same footing so far as the time from which enhancements and abatements of rent should take effect is concerned. I do not see any reason why the enhancement should take effect from the next year and the abatement from the previous year. I therefore leave my amendment for the decision of the House.

Hon'ble Sir Sam O'Donnell: I do not think that enhancement and abatement stand on the same footing. An abatement is granted because the rent is so high that the occupancy tenant cannot afford to pay; therefore it is essential that abatement should take place almost immediately. That is not the case with enhancement.

Question, that clause 66, as reported by the Select Committee, stand part of the Bill, put and agreed to.

CLAUSE 67.

67. (1) Except as otherwise provided in the Northern India Canal and Drainage Act, 1873, when the rent of a tenant of the classes mentioned in sub-section (1) of section 50 has been agreed upon, fixed, enhanced or abated under this Act or the Agra Tenancy Act, 1901, or the Land Revenue Act, 1901, it shall not be liable to enhancement or abatement until or unless—

- (a) the period specified in section 56 (4) or such longer period as may have been agreed on, decreed or ordered has elapsed; or
- (b) the period of the settlement of the local area in which the mahal is situated has come to an end; or
- (c) the area of the tenant's holding has been increased by alluvion or encroachment or diminished by diluvion or encroachment or by the taking up of land for a public purpose during the currency of the present rent; or
- (d) the productive powers of the land held by the tenant have been increased *by an improvement effected otherwise than by the agency or at the expense of the tenant* or diminished by any cause beyond his control, *as the case may be*, during the currency of the present rent.

(2) Where the rent has been varied merely on the ground of an increase or decrease in area, such variation shall not be considered in computing the periods mentioned in sub-clause (1) (a) of this clause.

Pandit Govind Ballabh Pant: I move that in clause 67 (1) (a) the words "the period specified in section 56 (4)" be replaced by the words "twenty years." It is one of those amendments which it has been my privilege to move in this House today, and I have no doubt that this amendment will be adopted by the House. I need not dwell on its merits at any great length. The reasons which I advanced in connexion with some other amendments of mine apply to this clause as well, and some of these were mentioned in our minute of dissent in para. 12. So I hope my amendment will be accepted.

Hon'ble Sir Sam O'Donnell: My objections to this proposal are precisely the same in principle as those which I urged yesterday when we were discussing the question of the limit of enhancements. During a period of even ten years the value of land might rise considerably. Since 1915 prices have doubled. No doubt that period included the war and the circumstances were exceptional; but even in the preceding period between 1904 and 1914 there was a rise of nearly 40 per cent. in prices and the letting value of land of course, is influenced by the movement of prices. The value of land does not vary immediately or any precise proportion with the movement of prices; and that of course is the reason why we consider that to attempt to determine enhancements and abatements of rents with reference to prices is an unscientific and unsatisfactory system. Nevertheless, it is an admitted fact that a rise in prices does affect the value of land and if the rents recognized by the law are kept stationary while prices are rising rapidly, they may cease to bear any proper proportion to the real letting value of the land. And when that happens, as we have seen in the case of Oudh under the old law, the result is concealment of rent or *naazana*, or as has happened in the case of the old occupancy rents in Agra, sub-letting and the rack-renting of the

[Hon'ble Sir Sam. O'Donnell.]

sub-tenants. Nor do we desire that rents should invariably be enhanced at the end of thirteen years. Our proposal is merely that they should be liable to revision. They will not be enhanced under either the roster year or any other system unless the circumstances were such as to justify enhancement. The period of thirteen years is a substantial period, it is a period within which great changes in prices may take place and we ought to make it possible, I think, to revise rents if during that period the circumstances have so changed as to render an enhancement reasonable and justifiable.

Pandit Govind Ballabh Pant: I do not think it is necessary for me to reply to the arguments of the Hon'ble the Finance Member, as we have had our say on these points more than once. I only think that even if a little variation be justifiable in certain circumstances before the expiry of twenty years whether by way of enhancement or abatement, the compensation that a tenant or zamindar enjoys in the sense of security and fixity has a value of its own and it is difficult and unpracticable on the affairs of this world to adjust ourselves in a scientific proportion to the ever-changing circumstances of the hour or the day. We find greatest relief in the knowledge and confidence that there is a certain security in a certain state of things for a certain length of time and that faith will give certain relief to the tenant even where he may be able to secure an abatement. For the clause is of a reciprocal character. On the one hand, it prevents the zamindars from seeking enhancement before twenty years, and on the other it precludes the tenant from securing abatement during that period. Apart from other reasons, this aspect of the question seems to me to be of very great value.

Question, that the words in the clause "the period specified in section 56 (4)" stand part, put and negatived.

Question, that for the words so struck out the words "twenty years", be inserted.

The House divided: Ayes, 45; Noes, 22.

Ayes.

Raja Bahadur Brij Narayan Rai.
Babu Narayan Prasad Arora.
Babu Bangam Lal.
Babu Mohan Lal Saksona.
Babu Damodar Das.
Babu Bhagwati Sahai Bodar.
Thakur Manjit Singh Rathor.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Raj. Shankar Sahai.
Dr. Jitendra Nath Misra.
Rai Bahadur Thakur Mahesh Singh.
Maulvi Zahur-ud-din.
Pandit Nanak Chand.
Lala Babu Lal.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Raja Suryopal Singh.
Babu Nemi Saran.

Chaudhri Bidan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Pande.
Rai Bahadur Pandit Balbhadra Prasad Tiwari.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhyay.
Rao Sahib Abdul Hameed Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Hussain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Shaikh Abdus Samad Azzari.
Raja Shambhu Dayal.
Raja Jagannath Bakhsh Singh.

Noes

Hon'ble Sir Sam O'Donnell.	Mr. R. L. Yorke.
Hon'ble Lieut. Nawab Muhammad Ahmad	Mr. R. Burn.
Sa'id Khan.	Mr. A. W. Pim.
Hon'ble Rai Rajeshwar Bali.	Mr. B. J. K. Hallows.
Hon'ble Thakur Rajendra Singh.	Mr. E. L. Norton.
Hon'ble Nawab Muhammad Yusuf.	Mr. H. G. Billson.
Mr. G. B. Lambert.	Mr. R. J. S. Dodd.
Mr. E. A. H. Blunt.	Colonel A. W. R. Coochrane.
Kunwar Jagdish Prasad.	Mr. A. H. Mackenzie.
Sir Ivo Elliott.	Mr. M. F. P. Herchenroder.
Mr. P. H. Tillard	Mr. Tracey Gavin Jones.
Mr. H. A. Lane.	

Question, that clause 67, as amended, stand part of the Bill, put and agreed to.

CLAUSE-68.

68 An ex-proprietary, occupancy or statutory tenant or heir of a Allowance for unex. statutory tenant who is sued for enhancement of renthausted improvements. may plead that he has constructed an improvement which continues to benefit his holding. In such case, if the improvement is one which the tenant was entitled to make, the court shall, in fixing the rent, make such deduction from the enhancement claimed as fairly represents in its opinion the increase in letting value due to the improvement :

Provided that in no case shall such deduction be made if the improvement was completed more than thirty years before the commencement of the suit.

Khan Bahadur Maulvi Fasih-ud-din : I move that in line 2 of the proviso substitute the figure "30" by the figure "15."

In my opinion fifteen years is a sufficiently long time for a person who has made any improvement to claim compensation for that improvement. If a landlord sues a tenant for ejectment or for anything else within fifteen years, the tenant has a perfect right and can legitimately claim compensation for improvement. But after he has enjoyed the benefits of that improvement for about a decade and a half I think it will be unreasonable to allow him any compensation for the improvement after such a long period.

For this reason I propose this little amendment of mine.

Hon'ble Sir Sam O'Donnell : I think that this is an unreasonable amendment. The honourable member who moved it assumes that the value of the improvement is exhausted in fifteen years. That is not so. The value of very few improvements is exhausted in fifteen years. The most ordinary improvement is the construction of a well and will the honourable member tell us that the value of a well is invariably exhausted in fifteen years; and if the value of that improvement is not exhausted in fifteen years, why should the tenant get no allowance on account of it.

Khan Bahadur Maulvi Fasih-ud-din : In spite of the fact that I know that many of the members of the Zamindar party have left the place, I would press my motion for the simple reason that I honestly believe that fifteen years for claiming compensation for an improvement is a sufficiently long time.

Hon'ble Sir Sam O'Donnell: I need only point out that the honourable member made no attempt to answer my arguments in the course of his second speech.

Question, that the word "thirty" stand part, put and agreed to.

Question, that clause 68 stand part of the Bill, put and agreed to.

CLAUSES 67, 70, AND 71.

Question, that clauses 69, 70, and 71 stand part of the Bill, put and agreed to.

CLAUSE 72.

72. (1) Notwithstanding anything hereinbefore contained, if it appears to a court making a decree in a suit for Remission of rent by court decreeing arrears, arrears of rent that the area of the holding was so decreased by diluvion or otherwise, or that the produce thereof was so diminished by drought, hail, deposit of sand or other like calamity during the period for which the arrears is claimed that the full amount of rent payable by the tenant for that period cannot be equitably decreed, the court may, with the sanction of the collector, allow such remission from the rent payable by the tenant for that period as may appear to it to be just.

(2) An order of the collector under sub-section (1), giving or refusing sanction to a remission of rent, shall not be questioned in any civil or revenue court.

(3) Nothing in this section shall be deemed to authorize any remission in the rent payable by a permanent tenure-holder, fixed-rate tenant, or thekadar.

(4) No remission made under the provisions of this section shall be deemed to vary the rent payable by the tenant otherwise than for the period in respect of which such remission was made.

(5) When remission of rent in accordance with the provisions of this section materially diminishes the assets of any mahal or patti, the revenue authorities shall take into consideration any claim made by the landlord for a remission of the revenue payable in respect of such mahal or patti, and shall pass such order thereon as the circumstances of the case may require.

(6) The provisions of this section shall not apply to remissions of rent claimed in alluvial tracts under any local custom providing for such remissions in holdings, the culturable area of which has been decreased by diluvion, deposit of sand, or the like causes.

Babu Nemi Saran : I beg to move that the following be substituted for sub-clause (1) of clause 72.

"Notwithstanding anything hereinbefore contained, a tenant, whose area of the holding is so decreased by diluvion or otherwise, or the produce thereof is so diminished by drought, hail, deposit of sand or other like calamity that the full amount of rent cannot be equitably paid by him, may apply to the collector within thirty days from the occurrence of the calamity for a remission of his rent; and if the collector is satisfied after hearing the objections of the landholder (if any) that owing to one or more of the aforesaid causes a remission in rent is equitable, he shall order such remission for such period as he may deem just." Sir, I will say that sub-clause (1) of clause 72 as

it now forms part of the Bill is a sub-clause which can be used against the landlord in more ways than one. Firstly, if you will look at the wording of the sub-clause as it now stands you will find that it says "if it appears to a court making a decree in a suit for arrears of rent," that is if a landlord brings a suit for arrears of rent say after three years of such calamity including rent for the period of that calamity, then the court shall be entitled to reduce the amount of the arrears of rent by any amount which it may consider just, having regard to the fact that there was a calamity in the period for which the rent is claimed in the suit. Sir, I think, that this sub-clause is only meant for cases in which there has been no general remission of rent because of a widespread hail or widespread famine or the like calamity. This sub-clause is only meant to apply to the case of stray holdings, for if there had been a case of widespread famine of hail-storm or something like that then what the Government do is that they issue a proclamation by which they remit or suspend the rents payable by the tenants and in that proportion they also remit or suspend the revenue paid by the landlord. But this section does not apply to these cases. It only applies to those cases where there has been no such widespread calamity and that calamity has been restricted only to certain plots of land or a certain holding. And in that case if a landlord brings a suit for the arrears of rent for that holding even after three years then the collector or the court having the suit before him is entitled to remit that portion of the rent of the tenant which he or it might consider just having regard to circumstances. My amendment which seeks to substitute new sub-clause in place of sub-clause (1) aims at bringing about a state of affairs in which when a tenant feels that his crops has been so really decreased or damaged that he is unable to equitably pay the rent that is due from him, in that case he can within thirty days of the occurrence of such calamity, bring a suit before the collector for declaration that a certain portion of his rent is to be remitted or suspended in view of that calamity. My reasons for the amendment are, firstly, that if a suit for arrears of rent is brought after two or two and a half years of the occurrence of such a calamity, then it is very difficult for the landlord to disprove the contention of the tenant that there was a calamity which seriously damaged his crops and that his rent should be remitted for that period. Similarly it is also very difficult for a tenant to prove that there was such a calamity and also to what extent his crops were damaged. Secondly, if you look at the existing clause, you will find that it does not give any right to the tenant to bring a suit for remission or suspension of his rent in case his crop is damaged and the tenant is only left at the mercy of the zamindar, and it is only when a suit for arrears of rent is brought against him that he can plead before the court of law that his crops were damaged and that he was entitled to a certain remission. The provision as it now stands cut both ways. It does not allow a tenant to come before a court of law for remission or suspension of his rent on the ground that his crops have been damaged by hail-storm or some other cause. Then it hits the landlord in this way that if a suit for arrears of rent is brought after three years, the tenant may come forward with the objection that his crops were damaged during a certain period and claim remission of rent accordingly. The landlord will then be in a very bad position, as it will be very difficult for him to produce any proof or evidence that there was no such damage to the tenant's

[Babu Nemi Saran.]

crops as alleged. Therefore, Sir, I think that in order to stop the litigation which might crop up if objections are raised by the tenant after two or three years when a suit for arrears of rent is brought we should provide a definite period within which a person, who is liable to be affected by this provision, should be at liberty to come before a court of law to have his case adjudicated upon. If you look at the wording of my sub-clause, you will find that it entitles a tenant, who is the person to be affected by that calamity and who is entitled to remission or suspension of rent, to come before a court of law within a specified period, namely, thirty days of the occurrence of such calamity, a period within which he can know how much his crops have suffered. It will also be easier for the courts to decide what proportion of his rent should be suspended or remitted. Therefore I think that in order to safeguard against frivolous objections which may be raised after two or three years, and in order to safeguard the position of the tenant and the landlord, it is very necessary that the sub-clause should be amended as I have tried to amend it. My amendment empowers the tenant to come before a court of law much earlier than he can do under the existing sub-clause and save the zamindars from any frivolous and vexatious objection which a tenant might make under the existing sub-clause even after a lapse of two years in a suit for arrears of rent.

Mr. B. Burn : I am sure that honourable members of the Council will have full sympathy with the honourable mover in his endeavour to obtain for tenants who have suffered any agricultural loss a proper relief. Where however there is ground for difference of opinion is in the measure which he proposes as an alternative to the proposal in the draft Bill. He wishes to provide that when any agricultural calamity has occurred the tenant may at once go to the collector and apply for a remission of his rent; he may apply within 30 days. My experience as a collector is that tenants who have suffered from calamities like hail or drought or flood are by no means slow in going to the collector's court. I have sat in a court and had applications of this sort brought in by the hundred. The honourable mover would make the collector inquire into these individually, and secure a remission of rent if after hearing the landlord he thinks it equitable. I presume the honourable mover did not suggest this as a method of permanent abatement of rent. There are other provisions in the Act which deal with that. In the first place his proposal is unnecessary in smaller calamities because these can be dealt with adequately under clause 72(1). If the damage done refers only to a small portion of the district and is not of the nature of, say, a hail-storm regarding which there are special rules I think it is much simpler to leave the tenant and the landholder to settle about remission themselves, if possible. I do not hold such a harsh opinion as zamindars so as to believe that in every case they do not make remissions and allowances of this sort. As I said earlier this afternoon I am a zamindar myself and I am constantly dealing with applications for suspension and remission of rent. The honourable member for Ballia speaking about alluvial mahals has referred to a regular custom in that district which I think is called *balpankhut* which refers to damage done by sand being deposited on fields. It is a well-known custom there and every zamindar practically recognised it. If there is any zamindar so hard hearted that

he does not and he tries to get his rent the court acting under the corresponding provision, clause 72(1), will give the tenant his remission. On the other hand if you get a widespread calamity such as famine it is absolutely impossible for a collector to go into individual applications of this sort. I am speaking of what I know. I have seen three famines myself in every capacity—as an assistant collector, as a district officer and as a commissioner and clause 73 provides amply for that case. When you have a widespread calamity, careful inquiries are made by your sub-divisional officers and your tahsildars and the district officers and very nearly every village affected is inspected and you fix not the remission of rent on each individual but the remission of certain proportion of rent in each village or occasionally in each mahal if they have been differently affected. Lastly, my objection is that to allow an application within 30 days is encouraging premature complaints which really may in the end be entirely unfounded. As the agricultural proverb goes *sukha dhan par pani* that is to say, rice which has partly withered and then gets a timely shower of rain turns out very much better than if it had had rain all along. Crops do recover even after floods. On all grounds, therefore, I suggest to the Council that the provisions which we have in the Bill in clauses 72 and 73 are better than the remedy which has been proposed.

Babu Nemi Saran : I heard the speech of Mr. Burn with rapt attention in order to find out where I was mistaken. But unfortunately I find that the pleas which he has advanced in favour of the retention of this sub-section amount to nothing more than this, that the words as they stand are better than the words which can be proposed by a non-official member. Sir, there are one or two things to which Mr. Burn has referred. In his closing remarks he has said that 30 days which I have provided for in the sub-section is a very short period and it would be rather premature within this period for a tenant to bring in an application of that sort. May I know if the three years period which has been given by the present sub-section of clause 72 to bring in certain kinds of objections is not too long a period—is it not too long a period to encourage frivolous and vexatious objections to be filed? As for the thirty days, I think if there is any objection to it, it could have been improved upon by the able advice of Mr. Burn and I would have very much liked to amend it accordingly.

Sir, the only thing which I have got to say in this connexion is: either do not have the present sub-clause altogether or amend it in the manner proposed. If you look at the rulings under the present Act you would not be able to lay your hand on a single ruling regarding this sub-clause, because it is very seldom brought into use. After three years it is very difficult to find out to what extent damage has been done; and my own object in bringing in this amendment was this, that I wanted that there should be a shorter period within which this thing should be settled; this thing should not be allowed to remain unsettled for three years, the limitation for arrears of rent. Therefore, Sir, if my amendment is not acceptable to the Government, then sub-clause (1) is unnecessary, unless Mr. Burn can show that there are very many cases in which it has been successfully used in many districts, which I doubt.

Hon'ble Sir Sam O'Donnell: I have only one remark to make. The honourable member who has moved this amendment has said that the pre-ent provision cannot have worked well because there are no rulings. That seems to be a curious argument. I should have thought that if there are a great many rulings it would be clear evidence that it was not working well. But the fact that there are no rulings shows that the present provision has worked to the satisfaction both of the landlords and tenants.

Question, that sub-clause (1) as reported by the committee stand part, put and agreed to.

The Council was then adjourned to the following day.

LEGISLATIVE COUNCIL.

UNITED PROVINCES OF AGRA AND OUDH.

Saturday, July 10, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a. m.
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(49)

Hon'ble Sir Sam O'Donnell.	Pandit Jhanni Lal Pande.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.	Lieut. Raja Durga Narayan Singh.
Hon'ble Rai Rajeshwar Bali.	Raja Narayan Pratap Singh.
Hon'ble Thakur Rajendra Singh.	Pandit Sri Krishna Dutt Paliwal.
Hon'ble Nawab Muhammad Yusuf.	Babu Parsiddh Narayan Anand.
* Mr. G. B. Lambert.	Pandit Yajna Narayan Upadhyaya.
Mr. E. A. H. Blunt.	Raja Sri Krishna Dutt Dube.
Kunwar Jagdish Prasad	Rai Sahib Babu Dip Narayan Roy.
Sir Ivo Elliott.	Rai Bahadur Thakur Hanuman Singh.
Mr. F. H. Tillard.	2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Mr. H. A. Lane.	Raja Indrajit Pratap Bahadur Sahi.
Mr. R. Burn.	Bhaya Hanumat Prasad Singh.
Mr. A. W. Kim.	Pandit Govind Ballabh Pant.
Mr. B. J. K. Hallows	Mr. Mukandi Lal.
Mr. E. L. Norton.	Babu Ram Chandra Sinha.
Mr. H. G. Billson	Raja Shankar Sahai.
Mr. R. J. S. Dodd.	Dr. Jaikaran Nath Misra
Colonel A. W. R. Cochrane.	Rai Bahadur Thakur Mashal Singh.
Mr. A. H. Mackenzie.	Kunwar Surendra Pratap Sahi
Mr. M. F. P. Herchenroder.	Khan Bahadur Mr. Muhammad Aslam Saifi.
Raja Bahadur Brij Narayan Rai.	Maulvi Zahur-ud-din.
Mr. H. David.	Rao Sahib Abdul Hamood Khan.
Babu Khem Chand.	Khan Bahadur Chaudhri Amir Hasan Khan.
Babu Narayan Prasad Arora.	Mr. Muhammad Ismail Ali Khan.
Babu Bangam Lal.	Maulvi Muhammad Obaid-ur-Rahman Khan.
Babu Mohan Lal Saksena.	Dr. Zia-ud-din Ahmad.
Babu Damodar Das.	Khan Bahadur Hafez Hidayat Hussin.
Babu Bhagwati Sabai Bedar.	Khan Bahadur Shaikh Masud-uz-Zaman.
Thakur Manjit Singh Rathor.	Khan Bahadur Mr. Muhammad Ismail.
Rai Jagdish Prasad Sahib.	Dr. Shafa'at Ahmad Khan.
Chaudhri Jaswant Singh.	Khan Bahadur Saiyid Muhammad Ashiq Hussain.
Rai Sahib Chaudhri Sheoraj Singh.	Khan Bahadur Maulvi Fasih-ud-din.
Pandit Nanak Chand.	Khan Bahadur Hakim Mahbub Ali Khan.
Lala Babu Lal.	Khan Bahadur Mr. Ashiq Hussain Mirza.
Thakur Rajkumar Singh.	Khan Bahadur Munshi Siddiq Ahmad.
Thakur Shiva Narayan Singh	Raja Saiyid Ahmad Ali Khan Alvi.
Rai Bahadur Babu Kam Nath Bhargava.	Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf
Rai Amba Prasad Sahib.	Shaikh Abdus Samad Ansari.
Rai Bahadur Pandit Kharagjit Misra.	Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Suryapal Singh.	Raja Shambhu Dayal.
Lala Dhakan Lal.	Raja Jagannath Baksh Singh.
Babu Nemi Saran	Mr. E. M. Souter.
Chaudhri Badan Singh.	Mr. Tracey Gavin Jones.
Rao Sahib Kunwar Sardar Singh.	
Thakur Sadho Singh.	
Pandit Brijnandan Prasad Misra.	

Khan Bahadur Maulvi Fasih-ud-din : Mr. President, before we proceed I have to move

Hon'ble the President : No business can be done until the questions have been disposed of.

QUESTIONS AND ANSWERS.

STARRED QUESTIONS.

PAY OF THE HIGH COURT STAFF.

*1. **Mr. Zahur Ahmad :** Will the Government be pleased to state whether they intend to ameliorate the condition of the ill-paid High Court staff by granting them an adequate increase of pay as recommended by the Hon'ble the Chief Justice, and, if so, when will orders be issued?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Government have given careful consideration to the matter and have not been satisfied that the High Court staff, which received a large increase of pay in 1920, is ill-paid. They have therefore decided not to grant a further increase of pay.

*2. **Mr. Zahur Ahmad :** Is it a fact that, on the motion of Khan Bahadur Hafiz Hidayat Husain at the last meeting of the Council an assurance was given on behalf of Government that the question of improving status of the High Court staff was under consideration, and that on this assurance the honourable mover withdrew his motion by leave of the House?

Hon'ble. Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes.

*3. **Mr. Zahur Ahmad :** As the Government have decided to give no increase of pay to the High Court staff, will they be pleased to state their reasons for this decision?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The High Court staff received in 1920 a much larger increase of pay than was asked for by the then Chief Justice. Since that date prices have not risen further, and it is therefore not possible to justify the grant of an increase of pay to the High Court staff unless similar increases have been or can be granted to other departments, which is not the case. The rates of pay also cannot, in the opinion of Government, be considered low either for the locality or by comparison with those current in other departments.

*4. **Mr. Zahur Ahmad :** Will the Government be pleased to state whether any proposition statement from the High Court in connexion with the recommendation of the Hon'ble the Chief Justice to increase the pay of the ill-paid High Court staff has been received by the Government? If so, what action has been taken on it?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes. No action has been taken on it.

***5. Mr. Zahur Ahmad :** Does the non-presentation of the said proposition statement before the Council mean that the Government has decided not to move in the matter? If not, will the Government be pleased to state when the orders on the subject are to be passed, or how long the matter is to be kept under consideration?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes. Orders have already been passed.

***6. Khan Bahadur Hafiz Hidayat Hussain :** Have the Government come to any decision regarding the increase in the pay of the High Court staff? If so, will the Government be pleased to state the decision?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The honourable member is referred to the answer to starred question No. 1 of today's date.

***7. Khan Bahadur Shaikh Masud-uz-Zaman :** [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

RETENTION OF OFFICERS IN ONE DISTRICT.

***8. Khan Bahadur Shaikh Masud-uz-Zaman :** Is it a rule that the Government will not allow officers generally to remain in one district for more than five years except for special reasons?

Hon'ble Sir Sam O'Donnell : There is no rule to this effect.

UNSTARRED QUESTIONS.

NUMBER OF TEACHERS.

1. Khan Bahadur Hafiz Hidayat Hussain : Will the Government be pleased to supply a list, compiled districtwise, showing the number of teachers employed in all primary schools and training schools and classes under district boards (excluding Islamia schools and *maktabs* and *pathshalas*)? How many of these are Muslims and how many Hindus?

Kunwar Jagdish Prasad : Information is being collected and will be supplied at a later date.

NUMBER OF MUSLIM BOYS IN MIXED SCHOOLS.

2. Khan Bahadur Hafiz Hidayat Hussain : What was the number of Muslim boys in all boards' mixed schools on May 1, 1926? What was the total enrolment on that date?

Kunwar Jagdish Prasad : It has not been possible yet to collect the figures, as schools were closed for the summer vacation.

CLERICAL STAFF OF CERTAIN DEPARTMENTS.

3. Khan Bahadur Hafiz Hidayat Hussain : Will the Government be pleased to place on the table a statement showing the clerical staff of (i) Public Works department, (ii) Agricultural department, (iii) Excise department, (iv) Co-operative department, (v) Sub-registration offices, (vi) Forest department, compiled districtwise, showing the number of Muslims and the number of Hindus in each department?

Kunwar Jagdish Prasad : The information is not available and its collection would entail considerable trouble.

4 to 9. **Lieut. Raja Durga Narayan Singh** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

10 to 22. **Mr. Muhammad Ismail Ali Khan** : [*Postponed at the request of Government till the first day of the meeting after the Muharram holidays.*]

MOTION FOR ADJOURNMENT.

Khan Bahadur Maulvi Fasih-ud-din : Before we proceed further, I have been commanded by my party to move an adjournment of this Council from tomorrow till July 24, 1926.

Hon'ble the President : I am afraid the motion for adjournment at this stage will not be in order. The motion can be made either when we adjourn for lunch or after we have disposed of the business of the day. If the motion is now carried, no business can be done even today. The honourable member should decide when he should move it.

Khan Bahadur Maulvi Fasih-ud-din : Can I move it now for tomorrow's adjournment?

Hon'ble the President : You cannot move it now.

Khan Bahadur Maulvi Fasih ud-din : Can I move it for today's adjournment?

Hon'ble the President : What is the idea of today's adjournment? I cannot understand the idea for today's adjournment.

Khan Bahadur Maulvi Fasih-ud-din : The idea of moving it now is that a large number of members have booked their seats and they are going to catch this afternoon's train.

Hon'ble the President : You have already anticipated the decision of the House? In that case the best thing for you to do is to bring a motion for adjournment at about quarter after one. In that case, it must be understood that no business can be done even after lunch if the motion is carried. I do not know if that is at the back of the mind of honourable members.

Khan Bahadur Maulvi Fasih-ud-din : That is at the back of our mind for today, Sir.

Hon'ble the President : That means then that no business can be done after lunch. What I mean is this, that if any motion is brought up, and if it is passed by the House—provided of course that it is not disallowed by the President—no business can be done after that motion has been carried.

THE AGRA TENANCY BILL.

CLAUSE 72.

Thakur Rajkumar Singh : I beg to move that sub-clause (5) be deleted and the following sub-clause be substituted in its place:—

“When a remission of rent in accordance with the provisions of this section is made, a remission in the revenue shall also be made.”

The object of my moving this amendment is that whenever a remission of rent is made, remission of revenue also should be made. I do not see any reason why it should not be. Why should the poor zamindars be left at the mercy of the officials concerned and undergo unnecessary expenses and trouble. Hence I move that whenever a remission is made in rent, revenue also should be remitted proportionately.

Rai Jagdish Prasad Sahib: I move that for sub-clause (5) the following sub-clause be substituted:—

“When remission of rent in accordance with the provisions of this section is granted, the revenue authorities shall on the report of the court grant a remission of revenue in proportion to the rent remitted for the corresponding area belonging to the same proprietor: provided that nothing in this sub-section shall affect tracts assessable to quinquennial land revenue.”

In moving for the substitution of this sub-clause I take my stand on the draft Bill of the 1924 committee. In that draft Bill an identical clause found place, but it did not find place in the Bill which was drafted by the Government. The select committee have, however, inserted a sub-clause identical to the one standing in the present Tenancy Act. But, Sir, the sub-clause, as it stands in the Bill, does not go far enough. I think that when the court is empowered to grant remission of rent, the revenue authorities should also, on the report of the court, grant a proportionate remission of revenue. I hope that as this is a matter not between the landlords and the tenants but between the landlords and the Government, my swarajist friends will also lend their support to the amendment.

Pandit Govind Ballabh Pant: I rise to accord my support to the amendment moved by the honourable member for Muzaffarnagar, not because the question is between the Government and the zamindars, but because it is an eminently reasonable proposal. Revenue has to be paid out of rent, and when the rent is remitted, there is no reason why the zamindar should be made liable for the corresponding revenue.

Hon'ble Sir Sam O'Donnell: I must oppose this proposal most strongly. The reasons why we were unable to accept the clause proposed by the 1924 committee are given at page 18 of the report of that committee:—“The official members opposed the change on the ground that the remission of rents in a few holdings was no ground for reducing the revenue; for the remission of rent in a few holdings would not in the great majority of mahals reduce the assets below the valuation upon which assessment was made at settlement, when a considerable percentage of the rental was normally rejected for instability. Further, revenue is assessed in consideration of the circumstances likely to prevail over a number of years and allowance is made accordingly. A purely temporary reduction of assets in the case of a few holdings cannot therefore be a logical ground for remission of revenue.” Those arguments seem to me to be entirely conclusive. If there is a serious calamity of any kind due to bad harvests, the Government are always ready to grant remissions and suspensions. The rules in the Board's circulars, now reproduced in the Revenue Manual, provided for such remissions and suspensions. It is unreasonable to claim that because in any year there has been a falling-off in the assets, however small, the revenue should be reduced. As pointed out in the quotation which I have just read out, allowance is made for all such losses when the assessment is made. During the course of a settlement the assets may increase very considerably, and indeed during some of the settlements now in force the assets have risen by something like 70 per cent. We do not ask for any increase in the revenue on account of such increase. The whole benefit of it goes to the landlord. On the other hand, when there is any large loss we make liberal suspensions and remissions. To ask us, therefore,

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that every time when there is a loss to a landlord in any year the revenue should be reduced is a proposal for which no justification can be adduced.

Thakur Rajkumar Singh: I am sorry I do not agree with the Hon'ble the Finance Member.

Question put that sub-clause (5) stand part of the Bill.

The House divided: Ayes, 18; Noes, 34.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut Nawab Muhammad Ahmad
Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr H. A. Lane.
Mr. R. Burn.

Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Hochenroder.
Mr. Tracey Gavin Jones.

Noes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Damodar Das.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Pandit Yajna Narayan Upadhyaya.
Rai Bahadur Thakur Hanuman Singh.

Raja Indrajit Pratap Bahadur Sahi
Pandit Govind Pallabh Pant.
Rai Bahadur Thakur Mashul Singh.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Munshi Siddiq Ahmad.
Qazi Habib Ashraf.
Raja Saiyid Ahmad Ali Khan Alvi.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Shambhu Dayal.

Question put that the amendment proposed by Rai Jagdish Prasad, Sahib be substituted for the sub-clause so deleted.

The House divided: Ayes, 35; Noes, 17.

Ayes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Damodar Das.
Rai Jagdish Prasad Sahib.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Pandit Yajna Narayan Upadhyaya.
Rai Bahadur Thakur Hanuman Singh.
Raja Indrajit Pratap Bahadur Sahi.

Bhaya Hanumat Prasad Singh.
Pandit Govind Ballabh Pant.
Mr. Mukand Lal.
Rai Bahadur Thakur Mashul Singh.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmad Ali Khan Alvi.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Shambhu Dayal.

Noss.

Hon'ble Sir Sam O'Donnell.

Hon'ble Lieut. Nawab Muhammad Ahmad

Sa'id Khan.

Mr. G. B. Lambert.

Mr. E. A. H. Blunt.

Kunwar Jagdish Prasad.

Sir Ivo Elliot.

Mr. P. H. Tillard.

Mr. H. A. Lane.

Mr. R. Burn.

Mr. A. W. Pim.

Mr. B. J. K. Hallows.

Mr. E. L. Norton.

Mr. H. G. Billson.

Mr. R. J. S. Dodd.

Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.

Mr. M. F. P. Horchenroder.

Question that clause 72 as amended stand part of the Bill put and agreed to.

CLAUSE 73.

Question that clause 73 stand part of the Bill put and agreed to.

74. (1) The Local Government, on being satisfied that the exercise of the powers hereinafter mentioned is necessary within any specified area in the interests of public order, may, with the previous sanction of the Governor-General in Council, by notification in the Gazette, invest a collector or assistant collector of the first class with the following powers, or any of them, within such area, namely,—

Investment of officer
with power to settle,
reduce and commute
rents.

(a) power to settle all rents;

(b) power, when settling rents, to reduce rents if, in the opinion of such officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable;

(c) power to commute produce rents into money rents.

(2) An officer invested with powers under this section may be invested with them either generally or with reference to specified cases or classes of cases, and shall have all the powers of a record officer under Chapter IV of the United Provinces Land Revenue Act, 1901.

(3) Nothing in this section shall apply to the rents payable by permanent tenure-holders of fixed-rate tenants.

(4) This section applies to the rents payable by thekadar, provided that when a thekadar's rent is reduced, the collector or assistant collector shall specify the period for which such reduction is to take effect.

(5) Every order settling or commuting rent under this section shall take effect prospectively from such date as the officer passing the same may direct.

(6) An appeal shall lie against an order under this section as hereinafter provided; but otherwise no order under this section shall be questioned in any civil or revenue court.

Rai Jagdish Prasad Sahib: I move that clause 74 be entirely deleted. My idea is that the provision which is incorporated in this clause is a very arbitrary provision. Such an arbitrary power ought not to be vested in the Government. If there is an emergency, then the Government can come forward and obtain the sanction of the Legislature for an arbitrary power like this. I therefore move that this clause be deleted.

Hon'ble Sir Sam O'Donnell: This clause simply reproduces a provision in Act II of 1901. The honourable member who has moved this amendment has not suggested that that provision has ever been abused by the Government. The clause simply gives the Government an emer-

[Hon'ble Sir Sam O'Donnell.]

gency power in the interest of public order to settle all rents, to reduce rents and to commute rents; and it is important that the emergency power should be there. The Government had never any occasion to use it during the last 26 years, but circumstances are conceivable in which the use of such power might be essential. There might be, for example, a series of bad harvests and seasons with great economic discontent and great danger to the public order. In these circumstances Government might find it necessary to use this emergency power. But it is idle to suggest that the Government will use it in an arbitrary fashion, seeing that during the last 26 years the power has never been used.

Rai Jagdish Prasad Sahib : The fact that this power has never been used during the last 26 years is all the more reason why it should not find a place in the Bill. Of course if there is an emergency, the Government can come forward and obtain the sanction of the Legislature. I hope therefore that this clause will be deleted.

Hon'ble Sir Sam O'Donnell : I do not think, Sir, the honourable member has even made an attempt to answer my argument. The fact that the power has never been used since 1901 does not prove in the least that circumstances may not arise in which the use of this power may be necessary. Of course it is possible for Government to bring forward special legislation, but that might involve very serious delay. It might be necessary to act very promptly in a matter of this kind.

Question put that clause 74 stand part of the Bill.

The House divided : Ayes, 22 ; Noes, 42.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.

Mr. H. A. Lane.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hollowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. I odd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herschenroder.
Mr. H. David.
Mr. Tracey Gavin Jones.

Noes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Damodar Das.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Pandit Nanak Ohand.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh
Thakur Badho Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Pandit Yajna Narayan Upadhyay.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Bavi Pratap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Pandit Govind Ballabh Pant.

Mr. Mukandi Lal.
Raja Shankar Sahai.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Saif Hidayat Hussain.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Hussain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmad Ali Khan Alvi.
Shaikh Abdus Samad Ansari.
Rai Bahadur Jala Mathura Prasad Mehrotra.
Raja Shambhu Dayal.

CLAUSE 75.

75. When the rent of the holding of an ex-proprietary or occupancy or statutory tenant or the heir of a statutory tenant has been settled or commuted under the preceding section, it shall not be liable on the ground specified in clause (a) of section 53 to an enhancement which will take effect before the expiry of the period specified in section 67 (1) (a) from the date from which the rent so settled or commuted became payable, unless the settlement of the mahal in which the holding is situated shall sooner come to an end.

Rai Jagdish Prasad Sahib: I move that clause 75 be deleted. It is a consequential amendment.

Question that clause 75 stand part of the Bill put and negatived.

CLAUSE 76.

76. A non-occupancy tenant, other than a tenant of *sir*, a sub-tenant or tenant of a person holding rent-free, whose rent has been settled or commuted under section 74, shall, subject to the provisions of section 70, be entitled to hold the land at that rent for a period of seven years.

Rai Jagdish Prasad Sahib: I move that clause 76 be deleted. This is also a consequential amendment.

Question that clause 76 stand part of the Bill put and negatived.

CLAUSES 77, 78 AND 79.

Question that clauses 77, 78 and 79 stand part of the Bill put and agreed to.

CLAUSE 80.

80. (1) On an application being made for the ejectment of a tenant under section 79, the court shall issue notice to the tenant stating the amount for which he is liable to ejectment, and requiring him to pay the amount into court within fifteen days of the service of the notice or to show cause why he should not be ejected from his holding:

Provided that notwithstanding anything contained in section 264 no such notice shall be served through the post.

(2) Unless within fifteen days of the service of the notice or such further time as may be allowed under such sub-section (3) either—

(a) the tenant pays the amount or payment thereof is certified to the court in accordance with rule 2 of Order XXI of the Code of Civil Procedure, 1908, or

(b) the tenant establishes that he is not liable to ejectment, the court shall order his ejectment.

(3) The court may for reasons to be recorded extend the time for payment :

Provided that except with the consent of the landholder (a) not more than three such extensions shall be allowed, and (b) the total period allowed for payment shall not exceed six months from the date of service of the notice.

Mr. Mukandi Lal : I move that in sub-clause (1) of clause 80 for the word "fifteen" the words "one month" be substituted. I move this amendment in order that the tenant may have a longer period at his disposal to collect money and to pay rent. I think fifteen days is too short a period to collect money. I hope the Council will accept the amendment.

Rai Bahadur Thakur Hanuman Singh : I support the amendment which has been moved by my honourable friend Mr. Mukandi Lal, and agree with him in what he said.

Hon'ble Sir Sam O'Donnell : As a matter of fact under sub-clause (3) the court may extend the time for payment. Therefore it does not seem very essential to alter the period from fifteen days to thirty days. But I have no real objection of any strength against this change.

Khan Bahadur Mr. Muhammad Ismail : I agree with the Hon'ble the Finance Member that, when there is a provision which gives the court the power of extending the period, there is no necessity of altering it from fifteen days to thirty days.

Mr. Mukandi Lal : When I suggest to change the period from fifteen days to thirty days I do not ask the Council for a great thing. Usually a month's notice is given, and if the period is increased by fifteen days, I do not think that it will mean an additional hardship to the zamindars ; they will not become paupers if rent is paid fifteen days later. I therefore request the honourable members of the Council to vote for increasing the period from fifteen days to thirty days.

Hon'ble Sir Sam O'Donnell : I have nothing to add.

Question that the words "fifteen days" stand part of the Bill put and agreed to.

CLAUSE 80(3).

Khan Bahadur Hafiz Hidayat Husain : I move that in the proviso to clause 80(3) "two" be substituted for "three" in line two and "three" be substituted for "six" in line 4. If we allowed two adjournments to a tenant and the total period allowed for payment be curtailed to three months instead of six, I think it would give the tenant ample time to raise money for payment of rent. Therefore I hope the Council will accept this amendment.

Hon'ble Sir Sam O'Donnell : I must oppose this amendment. The proviso in the Bill gives the court discretion to allow three extensions up to a total period of six months. We must assume that the court will act reasonably ; and all legislation is based on this assumption. We must therefore assume that the court will not grant more extensions than what can be reasonably claimed, that extensions will be refused to tenants who are merely recalcitrant and refuse to pay and

that extensions up to the maximum allowed will be granted if the circumstances of a tenant are such that he has a reasonable claim to receiving such extensions.

Khan Bahadur Hafiz Hidayat Husain: I do not think I said that reasonable time should not be allowed to a tenant to pay. The Hon'ble the Finance Member said that the tenant should be allowed time to pay till the next harvest. I will only point out that if a tenant has not been able to pay for three years, which ordinarily covers the period of a suit against him, he can hardly be expected to pay by the next harvest. And then what about the rent of the next harvest. Is it meant by this liberal grant of time to keep the tenant in perpetual arrears.

Hon'ble Sir Sam. O'Donnell: I can really add nothing to what I said except that in certain circumstances the extension of six months would give the tenant another crop which will enable him to pay arrears of rent. It must be remembered that if a tenant is ejected, that ejection will be a terrible blow to him; it may mean that he will lose his whole livelihood. Well, it is only fair to give him reasonable opportunity of finding the money before he is actually deprived of his holding.

Question put that the words "three" and "six" in the sub-clause stand part of the Bill.

The House divided: Ayes, 33; Noes, 34.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. Burn.
Mr. A. W. Pam.
Mr. B. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenroder.
Mr. H. David.
Babu Narayan Prasad Arora.
Babu Sangam Lal
Babu Damodar Das.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Pande.
Pandit Yajna Narayan Upadhyay.
Raj Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Mr. Tracey Gavin Jones.

Noes.

Raja Bahadur Brij Narayan Rai.
Raj Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Raj Sahib Chaudhri Sheoraj Singh
Lala Babu Lal.
Thakur Rajkumar Singh.
Raj Bahadur Babu Ram Nath Bhargava.
Raj Amba Prasad Sahib.
Raj Bahadur Pandit Kharagjit Misra.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
2nd-Lieut. Sahibzada Bavi Pratap
Narayan Singh, Raj Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Raja Shankar Sabai.
Raj Bahadur Thakur Masha Singh.

Kunwar Surendra Pratap Sahi.
Dr. Muhammad Naim Ansari.
Khan Bahadur Mr. Muhammad Aslam Saif.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan
Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman
Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Maulvi Faath-ud-din.
Khan Bahadur Hakim Mubhub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmad Ali Khan Alvi.
Raj Bahadur Lala Mathura Prasad Mah-
rotra.

Question put that in line 2 for the word "three" the word "two" be inserted, and in line 4 for the word "six" the word "three" be inserted.

The House divided: Ayes, 35; Noes, 33.

Ayes.

Raja Bahadur Brij Narayan Rai.
Rai Jagdish Prasad Sahib,
Obaidhri Jaswant Singh
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh,
Rai Bahadur Bibu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh
Lieut. Raja Durga Narayan Singh.
Raja Narayan Partap Singh.
2nd-Lieut. Sahibzada Ravi Partap Narayan
Singh, Rai Bahadur.
Raja Indrajit Partap Bahadur Sahi.
Bhaya Hanumant Prasad Singh.
Raja Shankar Sahai.
Rai Bahadur Thakur Mashal Singh.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam
Saifi.

Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan
Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman
Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-us-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Asbiq
Husain.
Khan Bahadur Maulvi Fasih-ud din.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmad Ali Khan Alvi.
Shaikh Abdus Samad Ansari
Rai Bahadur Lala Mathura Prasad
Mehrotra.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Saifi Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. B. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenroder.
Mr. H. David.
Babu Narayan Prasad Arora.
Babu Sangam Lal
Babu Damodar Das.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Pande.
Pandit Yajna Narayan Upadhyay.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Mr. Tracey Gavin Jones.

Babu Nemi Saran : I beg to move that the proviso to sub-clause (3) of clause 80 be omitted. In moving this amendment I may say that the amendment which has just been passed has made the proviso worse than what it was before. The change is so reactionary and of such a great disadvantage to the tenant that I think that on account of this very amendment which has just now been passed there would be many ejectments for non-payment of rents. We know that in the present Act of 1901 this proviso did not exist. According to the present Act the court was empowered to grant such extension of time as the court thought fit. But now we are limiting the powers of the court. The amendment which has just now been passed has curtailed the powers of the court to grant extension only to three months, and so this proviso is very injurious to the interests of the tenants. I hope that this proviso will be deleted altogether. All that we have given to the tenant, fixity of tenure, shall be counterbalanced

if this proviso is allowed to stand part as amended by the previous amendment. I therefore hope that my amendment will be accepted.

Khan Bahadur Mr. Muhammad Aslam Saifi : I beg to oppose the amendment with all the emphasis at my command. My honourable friend suggests that we ought to give something to the tenants. I wish to tell him that we have given all that we can. The curtailment of the periods in which the tenant should pay up was a necessary reform and which I may inform my honourable friend the mover we have just achieved.

But for your suggestion, Sir, to the mover of the amendment to be brief, I might have spoken at greater length, and therefore with these few words I oppose the amendment.

Hon'ble Sir Sam O'Donnell : I must support this amendment. I was quite willing to accept the proviso in the Bill. That proviso imposed a restriction on the court which is not to be found in the present Act II of 1901. Nevertheless, we did agree to it, because it appeared to us that it gave the court power to allow a sufficient number of extensions. Now that proviso has been altered. The court can only grant two extensions, and the total extension must not exceed four months. The result of that will be very serious indeed to a large number of tenants, and a landlord may be able to get rid of all his tenants if he desires to do so. An application is put in the month of May, the rains are holding off, the tenant is unable to get credit which he normally would get and in consequence he is ejected. If the period of six months is allowed, then the tenant would be able to get the next crop, and having done so, he would be able to pay off the arrears of rent. Surely it is wrong that tenants should not be allowed a reasonable period of grace. Surely the landlords do not wish to treat their tenants in the way in which the money-lender sometimes treats the man who has borrowed from him. I appeal to the landlords to take a liberal view in this matter and to accept this amendment.

Babu Sangam Lal : I rise to support the amendment moved by my friend Mr. Nemi Saran. This sub-clause in its original shape was bad enough, but now it has become the worst possible. All the concessions which the tenants have got under the various provisions of this Bill may be nullified by this one single sub-clause. It has been said, not only by us, but by the zamindars themselves, that the tenants are very poor, they have got to be saved from themselves; restrictions have been placed on their power of borrowing in the shape of declaring *zari-i-peshgi* leases void; various other restrictions have been placed on their power of borrowing money. If the honourable members of this House will read clause 81 they will find that it vests very summary powers in the zamindars for realizing rent. In addition to these, they have got the very summary power of distress, under which they can realize their rent. Under the present Act II of 1901 the tenant can be given unlimited time by the tahsildar if there are good reasons for it; but this period has been curtailed and it has been said that, because the zamindars are asked to pay their land revenue and no consideration is shown to them, therefore the tenants should be asked to pay their rents or be ejected. So far as that goes, I sympathize with the demand of the landholder; but we must be just to the tenant, because there is a good deal of difference between the position of a landlord and of a

[Babu Sangam Lal.]

tenant. If the zamindar fails to pay his revenue, the Government does not confiscate his property. At the most, the most drastic step that the Government takes in extreme cases is to temporarily take over the management of the estate. But in the case of the tenant, the tenant may lose his all, and throughout the discussion we have made one assumption and it is this, that the tenant is very poor; if he is allowed to even temporarily transfer his holding, he will be deprived of the holding by the mahajan. The mahajan has been abused very many times by many members here, but what will be the position of the zamindar if this sub-clause is allowed to be passed? Therefore, I think it is necessary that this sub-clause should be omitted.

Babu Nemi Saran : I think I have got nothing more to add, except that I want to appeal to the honourable zamindar members of this House that they should try as far as possible to give something to their tenants to keep them contented and not to give in such a way that what they give with one hand they take away with the other. The present proviso, if allowed to stand part in this Bill, would, I am pretty sure, nullify many of the advantages which are being conferred by this Act on the tenants, and I think this would at least, if nothing more, take the grace out of the concessions given to the tenants by the landlords.

Before I sit down, I want once more to tell the honourable members of this House that the result of this proviso would be disastrous. We already know that the economic condition of the peasantry is anything but satisfactory. It is very difficult for them to pay their rents at fixed periods. They really want some sort of latitude in paying their rent, and it is but fair that they should be allowed some time. As we already know that many of the zamindars and many of us who are in debt have found it very, very difficult to pay the money to the mahajans immediately when it is demanded; we always want an extension of time, and there are many suits brought in the civil courts to realize that money, and we also know that these suits are not brought simply because the person is not willing to pay, but generally because the person is willing to pay but he had not the money at the time and he wanted an extension of time which the mahajan was not willing to give. Therefore, if we find so much difficulty, it is but reasonable to think that the tenants, who are much worse off, would find it more difficult in paying at fixed periods. I therefore appeal to the honourable members of this House, and specially the honourable members who belong to the noble order, that they would try to concede as much as they could and keep the grace of the whole concessions and not take it away by passing this proviso. Therefore, I wish that this amendment of mine would be accepted by the House without a division.

Hon'ble Sir Sam O'Donnell : I appeal again to the landlords to accept this amendment. I cannot think that, if this amendment is not accepted, it will redound to their credit for enlightenment and a liberal spirit. After all, the tenant depends entirely on his holding. If he loses his holding, he may be reduced to beggary. I am not suggesting that all landlords would abuse their power, but if this amendment is not accepted and if the proviso as altered becomes law, then you will be placing in the hands of the bad landlord—it cannot be denied that there are some—a power which may and will be used in a very harsh and

oppressive manner. I would ask them to consider whether that is right and reasonable.

Question put that the proviso to sub-clause (3) of clause 80 as amended stand part of the Bill.

The House divided : Ayes, 37 ; Noes, 34.

Ayes.

Baja Bahadur Brij Narayan Rai.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh
Lala Babu Lal.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Raja Shankar Sahai.
Rai Bahadur Thakur Mashal Singh.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.

Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafat Ahmad Khan.
Khan Bahadur Saliyd Muhammad Ashiq Hussain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mabbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saliyd Ahmad Ali Khan Alvi.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Jagannath Bakhsh Singh.

Noes.

Hon'ble Sir Sam O'Donnell
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.

Mr. H. David.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Damodar Das
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Rai Bahadur Pandit Khuragjit Misra.
Babu Nemi Saran
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Pande.
Pandit Yajna Narayan Ujjadhya.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Mr. Tracey Gavin Jones.

Question that clause 80 as amended stand part of the Bill put and agreed to.

CLAUSE 81.

81. (1) A landholder may apply to the tahsildar for the issue of a notice to his tenant other than a permanent tenure-holder or a fixed rate tenant for payment of arrears of rent and for his ejectment in case of default; and the tahsildar shall then issue such notice,

Application for issue of notice for payment of arrears and ejectment in default.

(2) The notice shall be filed in triplicate and specify the name of the village and mahal, the number of the holding, the rent and the

amount of the arrear, and shall require the tenant either to pay the arrear into the court of the tahsildar within thirty days of the date of service of the notice or to contest the claim in the same court.

(3) If the tenant does not contest the claim, the tahsildar shall, subject to the provisions of sub-section (4), order his ejectment.

(4) If the tenant applies to the tahsildar to extend the time for payment, he may do so for reasons to be recorded :

Provided that, except with the consent of the landholder—

(a) not more than three such extensions shall be allowed, and

(b) the total period allowed for payment shall not exceed six months from the date of service of the notice.

(5) If the tenant contests the claim, the application for issue of notice shall be deemed to be a suit for arrears of rent on payment of the proper court fee. If the arrear claimed does not exceed Rs. 200, the tahsildar shall, subject to the provisions of section 78(4), decide the suit ; if the arrear claimed exceeds Rs. 200, the tahsildar shall forward the suit to the court of the assistant collector in charge of the sub-division who shall decide it.

Pandit Govind Ballabh Pant : I beg to move that in place of the word " tahsildar " the words " assistant collector in charge of sub-division " be substituted in the clause wherever the word " tahsildar " appears. There is a consequential amendment too which I shall move later.

Honourable members may have seen that under this clause 81 there is a very circuitous procedure prescribed in those cases in which a tenant raises an objection. If he raises an objection the tahsildar is to refer the file to the sub-divisional officer for the determination of the case. I think that such a clumsy method is not desirable. The procedure that is prescribed in clause 81 is likely to affect very important and valuable interests, and it is necessary that the gentleman who has to deal with it may be of a more responsible position than the tahsildar. I know that under section 81 the tahsildar has to deal with the application only so long as objection is not raised by the tenant, but this is a very important point by itself ; for if an order is passed under this section before the court has satisfied itself fully as to the service of the notice or other points concerned, it is likely to cause havoc. I think it is necessary that all these proceedings should take place before an officer of a higher position than the tahsildar. So I propose that in place of " tahsildar," sub-divisional officer or assistant collector in charge of the sub-division be substituted.

Mr. B. Burn : I rise to oppose this amendment. The object of the procedure described in clause 81 is to simplify the recovery of arrears of rent as much as possible. For that reason it is laid down that an application should be made in the first place to the tahsildar. If any objection is raised, then the application is treated exactly as if it has been filed as a suit. If the amount of the arrears bring it within the jurisdiction of the tahsildar, then the tahsildar proceeds to decide it as a suit. If, however, the amount of the arrears is larger, the case goes to the sub-divisional officer. There is no point at all in making it compulsory for the landholder to file these applications in the first place in

the court of the sub-divisional officer. It would mean simply taking up the time of a higher paid official for no reason whatever. The great argument in favour of this simplified procedure is that at present the bulk of suits for arrears of rent are decided *ex parte*. In cases like that it is perfectly reasonable that the whole business should be put through at smaller cost to the tenant by a simple application to the tahsildar instead of by a regular suit.

Pandit Govind Ballabh Pant : I have nothing more to add.

Hon ble Sir Sam O'Donnell : I have nothing to add to what Mr. Burn has said.

Hon'ble the President : The amendment is that in place of the word "tahsildar" substitute in the clause wherever the word "tahsildar" occurs the words "assistant collector in charge of sub-division."

Question that the word "tahsildar" wherever it occurs in the clause stand part put and agreed to.

Pandit Govind Ballabh Pant : I have another amendment to this clause, and this amendment is of greater importance than the one that I moved before taking up the present amendment. I move that after the words "fixed-rate tenant" the words "or an ex-proprietary or occupancy tenant" be inserted.

As is fully known to the members of this House, under the present Act of 1901 there can be no ejectment of any tenant to whatever class he may belong by means of an application presented under section 61. This procedure is being prescribed for the first time after the year 1901 by means of this Bill. So far as the ex-proprietary or the occupancy tenant is concerned, such a provision does not obtain in any Act whatsoever at present and has never been embodied in any Act before this. As may be known to the honourable members, in the Act of 1886 that was repealed by the Act of 1901 there was a procedure analogous to that which is being embodied in this clause, but it was expressly provided therein that no tenant with a right of occupancy will be ejected by means of an application. It may also be known to the honourable members that an analogous provision finds place in the Oudh Rent of 1886, and it was further confirmed when that Act was amended in 1921. That Act also lays down that no occupancy tenant shall be ejected by means of an application. In fact it goes beyond that. As did the previous Act of 1886, it says that no occupancy tenant shall be liable to ejectment except in the execution of a decree for arrears and provided that decree has remained in arrears for about a year. So this innovation that is being made by means of this Bill is of a highly prejudicial character and it is not supported by any precedent. As is known to the honourable members of this House, under section 40 this Council has valued the statutory holding at five times the rental of the statutory holding and the occupancy holding at six times the rental of the statutory holding, that is, the value of an occupancy holding will ordinarily not be less than twelve times the rental value of the occupancy holding. The maximum arrears of rent that may be due by a tenant can be only for three years and no more. This principle of ejectment of a tenant for arrears of rent is by itself not quite a logical provision. Ordinarily when money is due by a person, then action is taken against him and his goods are distrained or he is otherwise dealt

[Pandit Govind Ballabh Pant.]

with, but his means of living is not confiscated. So far as the civil courts are concerned, under the Civil Procedure Code certain properties are altogether exempt from attachment. The policy of the law is that persons so far as it can be helped be so dealt with that they do not lose their means of living and the principle is a perfectly sound one, for if people are dealt with in such a manner that they are forced into vagabondism or vagrancy, then it is dangerous to the State and harmful to the man concerned and causes immense loss to the family to which he belongs. I do admit that the tenants should ordinarily pay up the rents that are due by them in time, but the question is this: suppose a tenant does not pay up the rent in time, what is the penalty that should be imposed on him under the present Act?

Hon'ble the President : The honourable member is going beyond his amendment. He is discussing the whole policy of ejectment. He must confine himself to the point at issue.

Pandit Govind Ballabh Pant : Under the present Act the procedure that is laid down for ejectment is this, that "a tenant not being a permanent tenure-holder shall be liable to ejectment from his holding"—I am reading clause (a) of section 57—"on the ground that a decree against him or his predecessor-in-interest for arrears of rent in respect of that holding on account of any agricultural year remains unsatisfied at the expiry of that year." Under this Act the tenant is not liable to be ejected except when there is a decree for arrears of rent, and even after that he is not liable to be ejected unless that decree has remained unsatisfied till the expiry of that year. As against this, this summary procedure is being introduced. Those who have been following the revenue returns must have noticed that of late the area from which tenants have been ejected in execution of decrees under section 59 has expanded and is growing. So, if this clause remains in its present form, great hardship will be caused to ex-proprietary and occupancy tenants. Honourable members will kindly bear in mind that an ex-proprietary tenant is only an ex-proprietor. He is a man who once belonged to the class to which zamindars belong, but who, by an irony of fate, is reduced from the status of a zamindar to that of a tenant and his holding is ordinarily acquired by moneyed classes. In these circumstances it is but fair that an ex-proprietor, who in his own time and in the time of his ancestors has sustained himself by means of agricultural pursuits should not be dealt with so harshly as to forfeit his very means of living on account of a little delay in paying his rent. This clause in this Bill is in direct contravention of the policy that was introduced by the Act of 1901. It put an end to the practice of summary ejectment even for non-occupancy tenants, as it was found that such a practice was harmful and gave rise to fraud and collusion. This clause clearly upsets that policy. I have no quarrel so long as it is applied with proper safeguards to statutory or non-occupancy tenants, but ex-proprietary and occupancy tenants should be taken out of this clause.

Mr. R. Burn : The honourable mover wishes to add occupancy tenants to the class of tenants exempted from this procedure. The reason why permanent tenure-holders and fixed-rate tenants have been exempted is, that they are not liable in any case to ejectment on account of arrears of rent. There is no point at all in having this procedure applicable to them, since under other provisions of the law they are

not liable to ejectment. The honourable member says that this is an entirely new procedure and therefore we should move with caution. There are, however, two existing provisions of law which are to some extent parallel. One is the provision in the Court of Wards Act by which an application may be made for a certificate and arrears of rent are then collected as arrears of revenue. If the tenant in that case objects, as in the procedure prescribed in the Bill, the application is converted into a complaint and the case proceeds as a regular suit. There is also a provision in the Oudh Rent Act by which in the case of a general refusal to pay rents power is given to Government to issue a notification and then rents can be recovered in somewhat the same way.

The honourable member made a great point of the procedure laid down in the Code of Civil Procedure. Of course it is possible to argue that all land cases should be conducted entirely in the manner which is laid down by the Code. That, however, would be going against the whole theory of rent and revenue litigation in these provinces. We have provided the revenue courts because we think that their action is more expeditious and is certainly cheaper than the procedure of the civil courts. This procedure has been suggested in the interests of both the landlords and the tenants to simplify and cheapen the procedure. It is not merely a procedure enabling the landholder to get rid of his tenants.

Take the case of occupancy tenants whom the honourable member wishes to remove from the scope of this clause. The occupancy tenant *ex hypothesi* is paying a lower rent than the statutory tenant or the tenant-at-will. There is, therefore, all the more reason why he should pay rent more promptly. If honourable members will refer to the statistics published in the Revenue Administration reports they will find that in the year ending 1924, 51,000 cases were decided under section 59 of the Rent Act, i.e., applications for ejectment, and in only 10,000 out of the 51,000 was it necessary to issue orders for ejectment of the tenant. That shows that in the great majority of the cases in an ordinary year the tenants pay up, but that they do not always pay up until proceedings are taken up for ejectment.

The honourable member said that the ejectment procedure was changed when Act II of 1901 was passed, so as to get rid of the old procedure of ejectment by notice to the tenant. That, Sir, is only half the truth. The change was made to a very large extent in the hope that the additional cost and the additional worry caused to the zamindar would prevent him from ejecting his tenants at all. Statistics of ejectment have shown that that hope was not fulfilled. A similar hope was cherished in Oudh, when the Rent Act of 1886 was passed, by the levy of costs. In neither case has that been a success, and as far back as 1915 the Government had come to the conclusion, quite apart from any idea of creating statutory rights, that it was most desirable in the interests of both parties that we should go back to the procedure of notice instead of suit for ejectment.

Pandit Govind Ballabh Pant: The facts that I have stated have been practically admitted and the statement that I made that occupancy tenants have not been liable to ejectment by means of this summary procedure before this stands un rebutted. So obviously this change is undoubtedly prejudicial not only to his interests, but to his status also.

[Pandit Govind Ballabh Pant.]

He holds a certain position and he is entitled to certain privileges. As to the lower rate of rent, I think the rents of occupancy tenants have not been abated of late, and if they are low today, they were also low when the previous Acts for these provinces or the Oudh Rent Act of 1921 were passed. Therefore that does not change the position in the least. I do not say that the occupancy tenant should not pay his rent. But I say that it is a very heavy penalty that is imposed on him when he is deprived of his property because he has not punctually paid up what is due by him in any particular year or in any particular harvest. If all of us are dealt with in that manner, I am afraid there will be very few people left who will be able to follow their vocations. In these circumstances I still adhere to the view that this provision is unjust and unfair, and it should not stand unless it is narrowed down in the manner that I have proposed.

Hon'ble Sir Sam O'Donnell: As Mr. Burn 'has pointed out, the main justification for this change is that the great majority of the suits for arrears of rent are uncontested and it is desirable that in uncontested cases a cheaper machinery should be substituted. The tenant himself would gain by this substitution, because if a suit is filed he has to pay the costs of the suit. This procedure applies only when there is no dispute. If the tenant disputes the application, then sub-clause (5) applies and the application will be deemed to be a suit for arrears of rent.

The main argument advanced by the honourable member for Naini Tal was that the occupancy tenant's holdings are more valuable than those of statutory tenants. He holds at a favourable rent and therefore his rights are more valuable. Surely, Sir, the fact that he holds at a favourable rent is not an argument for allowing greater latitude in the matter of paying rent. Surely, if any class of tenants are entitled to special leniency, it is not tenants who hold on low rents, but the tenants who hold on high rents.

Question that after the words "fixed-rate tenant" the words "or an ex-proprietary or occupancy tenant" be inserted put and negatived.

Khan Bahadur Hafiz Hidayat Hussain: I beg to move that in the proviso to sub-clause (4) the word "two" be substituted for the word "three" and the word "three" for the word "six". The proviso as amended will read thus:—

Provided that, except with the consent of the landholder—

(a) not more than two such extensions shall be allowed, and

(b) the total period allowed for payment shall not exceed three months from the date of service of the notice.

Sir, in one of the speeches—I suppose it was at the time this Bill was referred to select committee—the Hon'ble the Finance Member was pleased to say that this clause was one of those innovations that conceded to the landlord speedy method of realizing his rent from the tenant. I do admit that this is one of the beneficent sections in favour of the zamindars. But, Sir, as the House will notice the section in its application is hedged round certain difficulties. Mere application is not

enough. Under clause (2) the notice has to be filed in triplicate and served on the man and he shall be required to pay the arrears within 30 days of the service of notice. Then, if the tenant does not contest the claim, the tahsildar shall order his ejection. If, however, he contests the claim, the procedure involved will be the same as for suits for arrears of rent, that is to say, the zamindar will be required to pay court fees as in the case of a suit for arrears of rent, and the case will be decided by an assistant collector of first or second class according to valuation.

Sir, the zamindar is required to pay revenue a day or two before it actually falls due, but it is in the experience of all of us that the rent of the tenants remains in arrears for considerable lengths of time. If, therefore, it is intended that the clause should not lose its effectiveness, it is highly desirable that reasonable time alone was given to the tenant to pay but if undue liberality was exercised the provision will be rendered nugatory.

Hon'ble Sir Sam O'Donnell: My objections to this amendment are exactly the same as those I gave in regard to the amendment to the proviso to clause 80. If anything, they apply here with still greater force, because the procedure under clause 81 is quicker than that under clause 80. Therefore, if the tenant is not allowed the extensions which we propose, he may be hit even more hardly than by the alteration in the proviso. If the arguments which I have already advanced do not appeal to my zamindar friends, I can only regret it and say that I do not think that amendments like these are likely to redound to their credit for a progressive and enlightened spirit.

Mr. Mukandi Lal: I beg to appeal to my zamindar friends who profess to have a soft corner for the tenants. The clause simply stipulates that within a period of six months a tenant can pay his arrears of rent. I fail to understand why the zamindar members should object to that period. The zamindars are far more prosperous and wealthy than the tenants. They can of course afford to pay land revenue at once from their pockets. If they do not realize rents from the tenants in time, they can pay land revenue out of their capital. In the circumstances I will advise my zamindar friends to stick to the period provided for in the Bill.

Raja Indrajit Pratap Bahadur Sahi: The House has already expressed its opinion on the matter in unmistakable terms in the discussion on clause 80 by the various amendments which were moved. So I need not say much in this connexion. My honourable friend Mr. Mukandi Lal, has said in his speech that the zamindars can well afford to pay land revenue out of capital, and that they can realize the rent from the tenants afterwards. I very much doubt if the honourable member for Garhwal is at all familiar with the conditions of most of the zamindars. Except a few zamindars they are all involved in huge debts and have other financial troubles. As every zamindar has to pay land revenue in time, and unless he does so he is put to a lot of trouble, it is highly desirable that facilities ought to be afforded to him in the way of realization of rent from the tenants. Further, it has been stated that the zamindars will abuse their power, which it is intended to give them under this clause. But this is a misapprehension. Very few big

[Raja Indrajit Pratab Bahadur Sahi.]

zamindars ever dream of bringing cases in court for the realization of the arrears of rent. They do so only as the last resort, when they find the tenants too stubborn to pay their rents. Therefore, this amendment, if accepted, would afford facilities to the zamindars in the payment of land revenue, besides saving the small landlords from ruin. With these words I support the amendment.

Question put that the words "three" and "six" stand part of sub-clause (4) of clause 81.

The House divided : Ayes, 40 ; Noes, 41.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Oochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. David.
Babu Khem Chand.
Babu Narayan Prasad Arora.

Babu Sangam Lal.
Babu Mohan Lal Sakseena.
Babu Damodar Das
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Pande.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyaya.
Rai Bahadur Thakur Hanuman Singh
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Noes.

Raja Bahadur Brij Narayan Rai.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Shooraj Singh.
Lala Babu Lal.
Thakur Rajtumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Kharajit Misra.
Raja Suryopal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh. Rai Bahadur.
Raja Indrajit Pratab Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Raja Shankar Sahai.
Rai Bahadur Thakur Maahai Singh.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Sa'id.

Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafis Hidayat Husain.
Khan Bahadur Shaikh Masud-ur-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafiat Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mabbub Ali Khan.
Khan Bahadur Mr. Ashiq Husain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmad Ali Khan Alvi.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Jagannath Baksh Singh.

Question put that for the words so struck out the words "two" and "three" be inserted.

The House divided : Ayes, 40 ; Noes, 41.

Ayes.

Raja Bahadur Brij Narayan Rai.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Chaudhri Sheoraj Singh.
Lala Babu Lal.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Kharagjit Misra.
Raja Suryapal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Raja Narayan Pratap Singh.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Raja Shankar Sahai.
Rai Bahadur Thakur Mashul Singh.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saifi.

Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Husain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Raja Saiyid Ahmad Ali Khan Alvi
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Shaikh Abdus Samad Ansari.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Jagannath Bakhsh Singh.

Noes.

Hon'ble Sir Sam. O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hollowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. David
Babu Khem Chand.

Babu Narayan Prasad Arora.
Babu Saugam Lal.
Babu Mohan Lal Saksena.
Babu Damodar Das.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Parde.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyaya.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Mukand Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra
Mr. E. M. Souter.

Mr. Tracey Gavin Jones.

Hon'ble the President : In ordinary cases when a Bill comes before the House as reported by the select committee and the House fails to come to a decision by a majority as regards a particular amendment moved, in accordance with the Parliamentary practice the way for the President is clear. He has to vote for the *status quo*, i.e. for the retention of words as reported by the committee. The House has in connexion with the previous clause 80 voted in favour of "two" and "three" in more or less similar case. The words "three" and "six" have, by virtue of the decision of the House, been taken out of this proviso to sub-clause 81. If I do not vote for the insertion of the words "two" and "three", I shall be leaving a blank in the proviso to the sub-clause, which cannot be the intention of the House. I therefore vote for the amendment.

Amendment declared carried by the casting vote of the President.

Babu Nemi Saran: I beg to move that clause 81 be deleted. Clause 81 is a new insertion in the present Bill and is a departure from the old Act of 1901. The reasons which were advanced by my honourable leader, Pandit Govind Ballabh Pant, regarding his amendments by which he wanted that the occupancy tenants should be excluded from the provisions of this clause, apply with greater force now that the clause has been amended in a way that the tenants will be affected adversely. If you go to the history of this clause you will find that this provision did form part of the Tenancy Act prior to that of 1901 in a certain shape, but in that Act this provision did not apply in the case of tenants with rights of occupancy. When the question whether this clause should form part of the Act of 1901 was under discussion it was decided that this provision should not be inserted as it would give rise to many collusive ejectments in which the tenant would be the loser. The clause as now amended has become much more drastic than what it was before. We all know that there have been many cases under the present Act II of 1901 in which the tenants were ejected in execution of decrees for arrears of rent in a fraudulent manner. The notice was never really served on the tenant in the way it ought to have been, and the result was that he never knew that he was going to be ejected. He came to know of this only when possession was being taken from him. When the old section for arrears of rent could be so misused, the present clause which has got no safeguards is liable to greater abuse. It is a very easy thing for a zamindar to go to a tahsildar's court and file a notice for arrears of rent. The tenants who are generally not in the habit of paying their rent at the exact date would not in fact realize that there was a notice from the tahsildar for their actual ejectment if they did not pay their rent within the period provided in this clause. We all know, Sir, that our tenants are not so educated and do not know their rights so well as the zamindars. Generally they do not know what the contents of the notices that are served on them are. The chaprasi who takes the notice to them tells them what the contents are. Now we know well that it is so easy for the zamindar to win over the chaprasi and to get the notice served in such a way that the tenant concerned will never know what in fact has been served on him. The only safeguard which was put in this clause was about the extension which a tahsildar could give, and by the amendment which the House has just passed that safeguard too has been curtailed. Now the effect of this clause would be that the tenant would find himself in a very precarious condition at the failure of one crop, because the maximum time that can be allowed to him is only three months and he would get no opportunity to pay the arrears of rent from the proceeds of his next crop which could be ready only in six months. Therefore clause 81 is distinctly disadvantageous to the tenants. In the first place the tenant does not even know that he has got to pay arrears of rent, as no decree has been passed, and does not feel that he would be ejected. But the provision inserted in the Bill would come on his head like a bolt from the blue and he would find that he has got to pay the money within a certain period and the utmost extension he can get is three months, otherwise he will be ejected. I hope the honourable members of this Council would feel the position of a tenant who has got a bad crop and under certain circumstances is not able to pay the money. He is served with a notice that payment should be made within 15 days or he is to be ejected.

Formerly, the utmost that the zamindar could do was that, in case of arrears of rent, he could file a suit, and after a decree had been passed the tenant could get sufficient time to think over his position, and when the zamindar wanted to execute the decree the tenant could again get some time. The present provision in section 81 is clearly a strong departure from the present policy of the Bill and would be an undue hardship on the tenants. The second thing is that the period of three months is too short: perhaps it may be said that it is analogous to what has been passed in section 80, in which there are many safeguards by which a tenant would get time. In that case suit is to be decreed first, and after the decree has been passed an application will have to be made for its execution and then orders for its execution will have to be passed. After all this lengthy process a tenant can be ejected, but even then he will get three months. In section 81 no time is given to the tenants. The very first day that a tenant falls into arrears he is served with a notice, and if within fifteen days the arrears are not paid—of course the tahsildar can extend the period up to three months—he is ejected. Sometimes there is a difference of more than three months between two crops, and if a tenant is not in a position to pay the money on account of failure of one crop, he will not be able to do so till the next crop. But according to the present provision he cannot get an extension of more than three months, even though the court may be satisfied that he is really in need of such an extension. Therefore I beg to suggest that if they really want that section 81 should not be used as an engine of oppression on tenants, it is very necessary that either certain safeguards should have been provided, such as Pandit Govind Ballabh Pant wanted to provide, or as the House has declared that they do not want such safeguards, section 81 should be deleted.

Rai Bahadur Thakur Hanuman Singh: I rise to support the amendment moved by my honourable friend Mr. Nemi Saran. I would not have thought of supporting him had the amendment of my friend Khan Bahadur Hafiz Hidayat Husain not been carried. The law, as amended by the amendment of Hafiz Hidayat Husain, has become so stiff that whenever it will be applied against the tenants, the tenants' lot will be simply deplorable. They will be ejected from their holdings in large numbers; it will be more injurious than if the Government had not stopped the ejectment suits which were filed in large numbers by the landlords when they learnt that a new Rent Law was to be passed. I do not know what will be the number of holdings from which the tenants will be ejected under this clause, but I can say without any fear of contradiction that the number of ejectments will be too large. I am sorry to find that whatever the landlords have conceded in this Bill in favour of the tenants they are trying to take away by other means. The grace which existed in their concessions is being very much diminished by these amendments which they are carrying in their favour. As a revenue officer and as a manager of a certain estate I know that the courts have unfettered discretion to allow time to the judgement-debtor to pay the decreed rent under the existing law. I know certain cases in which such a long time was allowed to the judgement-debtors as two years or more. Of course, this was because the decree was for a large amount.

[Rai Bahadur Thakur Hanuman Singh.]

The tenants are generally poor; they cannot be expected to find ready money to pay off the rent decrees passed against them without borrowing. Whenever any rent decree is being executed against a tenant, if he goes to a money-lender, in the first place the money-lender refuses to advance loan to him, and if he does, he asks for a very high rate of interest. In all cases this section will act very injuriously against the tenants, who are generally poor. Their case becomes unenviable when decrees are being executed against them. I think it won't be better that this section should not form part of the Act.

With these few remarks I support the amendment which has been moved.

Hon'ble Sir Sam. O'Donnell: The Council knows that I regret very much the changes we have just made in clause 81. Nevertheless, for reasons which have been fully explained both by Mr. Burn and myself, I am in favour of the principle of clause 81 and therefore I am not prepared to go so far as to support the amendment for the complete deletion of this clause.

Babu Nemi Saran : The reply of the Hon'ble the Finance Member that he was not prepared to support the amendment because of the remarks which fell from him in connexion with the amendment of Pandit Govind Ballabh Pant is unintelligible to me. If we commit ourselves to this clause, I think we would be committing ourselves to a principle and to a provision which we all know, and I hope the Hon'ble the Finance Member also knows, is very injurious to the condition and to the well-being of the tenant. I have fully explained in my first remarks that the present section is in more ways than one injurious to the tenantry, and I have moved this amendment in the hope that after the amendments that have been passed by this House restricting the period in sections 80 and 81, this amendment would find favour with at least those liberal minded zamindars who do see that their well-being is intertwined with that of their tenantry. I, though in vain perhaps, feel it my duty that I should appeal to the sentiments of the honourable zamindars in this House that they should, in duty to the constituencies which they represent and in duty to the well-being of the country to which they belong, review their position and they should see that this section 81 is fraught with dangers which may work havoc amongst the peasants. This section would be used, I think, by unscrupulous zamindars, of whom I fear there are many, to eject a tenant in ways which are not permissible by this Bill. The peasantry of this country, as we all know, is in that condition of poverty which is rarely to be found in other countries, and unless we are prepared to extend our helping hand to them in right earnest and not only in a rather showy manner, we must make such provisions in this Bill which would fit in with their present economic conditions. As I said before, it is very difficult for a tenant to pay his money within a fixed time, and generally the tenants pay their debts or their dues due from one crop by the proceeds of another crop, and the period of three months provided in this section would not, in my opinion, cover the case in which the difference in period between the two crops is more than three months. Therefore, without urging this point further, I would request

and appeal to the honourable members who constitute the majority here, that they should not use their majority in a cruel way and should see that there is a class of people in this country who out-number them at least in population and who are inferior to them in intellect and money, and that they represent that class of people while sitting in this Council, and they should in fairness to their constituencies pass the amendment which I have put before this House.

Hon'ble Sir Sam O'Donnell: I have nothing to add.

Question, that clause 81 as amended stand part of the Bill, put and agreed to.

CLAUSE 82.

Question, that clause 82 stand part of the Bill, put and agreed to.

CLAUSE 83.

83. In a suit for ejectment under section 82 if the plaintiff succeeds, the court may in its discretion pass a decree for the ejectment of the tenant from the entire holding or such portion of it as is actually transferred or sub-let at the date of the institution of the suit, notwithstanding that the plaintiff may have sued for his ejectment from the entire holding :

Decree in suit under section 82.

Provided that, in the case of a voidable sub-lease, for special reasons, which must be recorded in writing, the court may pass a decree permitting the tenant (not being a sub-tenant) to apply in the same proceeding, within a time not exceeding one month from the date of the decree, for the ejectment of the person in whose favour the voidable sub-lease has been made, and directing that if the tenant so applies and if he ejects such person and resumes occupation of the land within such further time as the court, either in its decree or by means of a subsequent order may fix, the decree shall not be executed against the tenant except in respect of costs. In such case the decree shall direct that if the tenant either fails to apply for the ejectment of such person within the time fixed in this behalf, or fails to resume occupation of the land within the further time allowed by the court for that purpose, the tenant shall be ejected either from the entire holding or from such portion as the court may direct, as the case may be.

Mr. Mukandi Lal: I move that the words "the entire holding or" in line 4 of clause 83 be deleted.

This clause if it is allowed to remain in the present Bill would amount to a penal clause. What we are aiming at is that if a tenant transfer illegally, in contravention of the various provisions of this Bill, particularly referred to in section 34, any part of his holding then he is likely to be ejected from his entire holding. That is the meaning of this clause if it is not allowed to be amended as proposed by me. When we look to clause 40, where there are various consequences of the non-fulfilment of the conditions on the part of the landlord, we find that if the landlord does not utilize the land which he takes from the tenant for the various purposes for which he is allowed to take under section 40, then the tenant is allowed to recover his holding or part thereof, but no more than what was taken from him. That is to say, if the landlord fails to fulfil the conditions of section 40, then the tenant has the privilege of taking back that part of the holding which was taken away from him by the landlord. On the other hand, in this clause if the words "entire holding or" are allowed to remain, it means that if the tenant happens

[Mr. Mukandi Lal.]

to transfer a portion of his holding, then he forfeits his entire holding. Supposing a tenant transfers two acres out of 10 acres of his entire holding, then as a consequence of this clause he will lose his whole 10 acres, though he has transferred only two acres. If we look to the report of the committee that sat in 1924, we will find that section 40 of that committee's draft Bill also does not give this power to the landlord to take back the entire holding. Again, if we look to the draft Bill that was presented by the Government to us we find section 83 running thus:—"The court may in its discretion pass a decree for the ejectment of the tenant from such portion of the holding as the court, having regard to all circumstances of the case, may direct, notwithstanding that the plaintiff may have sued for his ejectment from the entire holding." The select committee has inserted the words "entire holding." The select committee wants to penalize the tenant who might have, in his folly or under pressure of agricultural needs, transferred a part of his holding.

Again, if we look to section 66 of the existing Act, there also we find that this power was not given, though it is said in section 66 that the tenant is liable to ejectment on the ground specified in clause (d) of section 57, which says:—"on the ground of any act or omission detrimental to the land in that holding or inconsistent with the purpose for which it was let, he could be ejected either from the holding or from such portion thereof as the court, having regard to all the circumstances of the case, may direct." So in that case the option was given to the court. Here in the present Bill even the option is not given to the court as to whether the tenant is to be ejected from his entire holding or only from a part thereof. My amendment is based on fair play and justice and equity. We want that the law should be the same for landlords as for tenants. We are not asking for any special privilege for the tenants under this clause. Under section 40 we find that if a landlord commits any act in contravention of the provisions of section 40, he forfeits only a part of the holding that he has taken back from the tenant. The same law should apply to the tenant also, that is to say, if the tenant breaks any provision of the law, he should forfeit only that part of his holding in respect of which he has committed that breach. I hope the Government will readily accept my amendment, because these words did not find place in the original Bill as drafted by the Government and they were added in the select committee. So far as landlords are concerned, I think they would like to be placed on the same footing and not in a position of inferiority, because if something extra is given to them they will certainly be placed in a position of inferiority. The rights of tenants should be based on justice and equity and not on any special favour, and I therefore hope that my amendment will be accepted by the zamindars.

Rai Bahadur Thakur Hanuman Singh: A similar amendment to the one that has been moved by my honourable friend Mr. Mukandi Lal stands in my name, but instead of moving my own amendment I would like to speak to the amendment that is now before the House. Sir, I am not going to repeat what has fallen from the honourable mover. What I desire to add is that there appears to be no justification for the words "the entire holding or" to form part of the section.

When a tenant sub-lets a portion of his holding, it may be presumed that either he cannot manage to cultivate that portion of land himself or that he does not require it for his own cultivation. So in these circumstances it is desirable that he should be ejected from that portion of his holding only which he might have sub-let. Certainly there appears to be no justification in ordering his ejection from the whole holding. I think a similar law as at present exists has had a very hard effect on certain tenants against whom it was applied. If the Council would consider the fate of the tenant, I hope it will come to the conclusion that the retention of the words the deletion of which has been moved is unnecessary and will operate unjustly on the tenants. I have nothing more to say but that the landlord members should think that they represent not only the landlords in this House but also the tenants. So they should be just to both. Had they not received the votes of the tenants of their constituencies, they would not have been able to take part in the deliberations on this Bill in this Council, and I would like to warn them that if they would be so much against the interest of the tenantry, the tenantry in their constituencies will think twice before giving their votes to them in future.

Hon'ble Sir Sam O'Donnell: The first point which I wish to make clear is that as far as I can see there is no practical difference between clause 83 and the provision in the existing Act. Under section 66 of the existing Act, the court can eject a tenant either from the whole of the holding—that means clearly the entire holding—or from such portion thereof as the court may direct. Again in the Bill as published the intention clearly was that the court should be entitled to eject a tenant from the whole of the holding or from such portion thereof as it considered fit. It is true that under clause 83 a court must at least eject from the portion sub-let, but in practice under the old law if the court passed a decree for ejection it would be for ejection from a portion not less than the portion sub-let. I do not think there is any practical difference between the old Act and clause 83.

The honourable member who moved this amendment desires that the court should have no discretion, that the court should in all cases be entitled only to eject from the portion sublet. I think that the court should have discretion. The discretion will not be a discretion that will be arbitrarily exercised; it will be subject to appeal and revision. There are cases, cases of continuous and deliberate subletting in contravention of the law in which it would be reasonable that the tenant should be ejected from the whole of his holding. I am advised that cases of that kind have actually come before the Board of Revenue.

Mr. Mukandi Lal: As I have had to remark on previous occasions, the attitude of the Government is really beyond my comprehension as regards the safeguarding of the interests of the tenants. Though they have often reminded us that they stand here for guarding the interests of the tenants and that what they want to legislate for is a fair and equitable law which could be applied to the tenants in the same way as to the landlords, I do not understand their motive—they have not given any reasons here—in penalizing the tenant who deliberately transfers his land. If the Government's intention is to retain these three words there with a view to penalize the tenant and stop him from alienating

[Mr. Mukandi Lal.]

any portion of his holding, certainly that should be made clear. I understand that this is going to be a revenue or civil law and not a part of the Indian Penal Code. Therefore if these words are retained in the Bill it means that we are penalizing a tenant who has transferred a part of his land. It has been said that in the original Act of 1901 the words were that the tenant could be ejected either from the entire holding or a portion thereof. There are so many words and so many sections in the existing Act that we have changed fundamentally, and if the Government is not committed to stand by every section of the existing Act, I do not see what motive it has in standing by the words that by implication empower the collector to eject a tenant from the entire holding or a portion thereof. It seems to me that the Government is very fond of the discretionary power of the collector, and I am glad that it has let the cat out of the bag. That was the reason why Government yesterday was resenting very much the exclusion of the power of discretion of the collector in regard to another section which certainly was for the benefit of the zamindar members. As we know, when people have once made up their mind, arguments are of no avail. If the Government is inclined to retain this penalizing clause, I will only say that it has not made out a case on grounds of equity, on grounds of justice and on grounds of sound law. I think it is revolting to law and equity to retain such a penalizing clause, which penalizes one section of the society and not the other for the same offence. It is making two laws for the same offence for two sections of the society.

Hon'ble Sir Sam O'Donnell: I did not of course suggest that the fact that a particular provision is found in Act II of 1901 is a conclusive argument for its retention in the present Bill. That was hardly a position which I could take up. I merely wished to point out that in this clause we were not increasing the penalties for sub-letting in contravention of the law. As to the argument that I am anxious to retain power in the hands of the collector, I need only point out that these suits are not tried by the collector; they are tried by the assistant collector. Lastly, the honourable mover has made no attempt to meet my argument that this clause simply gives the court a discretion. It does not say that the ejectment will in all cases be from the entire holding, but only gives the court a discretion which will be exercised in a judicial manner and will be subject to revision and to appeal.

Hon'ble the President: The amendment moved is that the words "the entire holding or" be deleted from clause 83.

Question that the words "the entire holding or" stand part of the clause put and agreed to.

The motion was put and adopted.

At this stage the Council adjourned for lunch.

After the recess the Deputy President took the Chair.

Mr. Mukandi Lal: I move that the words "in the case of a voidable sub-lease" be deleted from line 1 of the proviso to clause 83, and I also move that the word "voidable" occurring in the sixth line of the same be deleted.

Under the present Act it is permissible for the transferers and those who have entered into void contracts to come under the protection

of this clause, but unfortunately, instead of improving the position of all sub-lessees and ignorant tenants, this clause provides that only those tenants who entered into voidable contracts and sub-leases will be allowed to come to the court and get a decree from the court for ejectment of their sub-lessees. Therefore, Sir, in fairness to the ignorant tenants who do not know what are void or voidable contracts and what are good contracts I move for the deletion of the words "voidable sub-leases." I do not see any reason why the present law should be changed and transferors of void contracts should be excluded and only those who have entered into voidable sub-leases should be allowed the protection of this sub-clause.

Hon'ble Sir Sam O'Donnell : The object of this amendment is to enable the court to give a tenant who has given a *zar-i-peshgi* lease the option of ejecting a sub-tenant and retaining the holding. We had, Sir, lengthy discussions on the subject of *zar-i-peshgi* leases, and I have already explained to the Council the view which we take. We take the view that such leases should be void, and we do not think that the benefit of this proviso should be extended to them.

Mr. Mukandi Lal : My point was that by implication this clause bars other transferors from seeking the protection of this clause, and that is why I am moving for the deletion of the words ; and particularly, as my previous amendment has not been accepted and as it had been definitely laid down under clause 83 that a tenant can be ejected from the entire holding, it is much more important that we must have safeguards for those ignorant tenants who cannot realize the difference between a voidable contract, void contract and a good contract. It was urged, Sir, that the discretion is not in the hands of the collector, but that of the court. I submit, in spite of the subtle difference pointed out by the Hon'ble the Finance Member, it is the collector who is the revenue court who will exercise the discretion, and the discretionary powers are not appealable—on this point there are rulings. Therefore, I do think that it is very necessary that these words should be deleted.

Hon'ble Sir Sam O'Donnell : I confess I could not follow the arguments of the honourable member in his second speech. I said in the beginning that the effect of this amendment would be to give the court the power of allowing a tenant who has given a *zar-i-peshgi* lease the option of ejecting a sub-tenant and taking the holding. What applies to *zar-i-peshgi* leases also applies to mortgages. The two stand on the same footing.

Mr. Mukandi Lal : On a point of order, Sir. That by implication bars ordinary transferors from seeking the protection of the clause.

Hon'ble Sir Sam O'Donnell : It applies to all transfers except to voidable leases.

Question, that the words "in the case of a voidable sublease" in line 1 of the proviso and the word "voidable" in line 6 stand part, put and agreed.

Question, that 83 stand part of the Bill, put and agreed to.

CLAUSe 84.

84. (1) A tenant, not being a permanent tenure-holder or a fixed-rate tenant, shall be liable to ejectment from his holding on the suit of the landholder—

Ejectment for detrimental Act or breach of condition of tenure.

- (a) on the ground of any act or omission detrimental to the land in that holding, or inconsistent with the purpose for which it was let ;
- (b) on the ground that he or any person holding from him has broken a condition, not inconsistent with the provisions of this Act, on breach of which he is by special contract with his land-holder liable to be ejected :

Provided that the use of a holding for the purpose of grazing or of raising stock (including horses) or the construction of enclosures suitable for stock raising shall not constitute a ground for ejectment under clause (a).

(2) In any suit for ejectment under this section any person claiming through the tenant may be joined as a party, and where the plaintiff's cause of action is based wholly or partly on any act or omission or breach of condition by a sub-lessee or other transferee such sub-lessee or other transferee shall be joined as a party.

Rai Bahadur Thakur Mashal Singh : I beg to move that in clause 84, the following be added as sub-clause (c) :—

"(c) on the ground that his holding is situated in a village in which he does not ordinarily reside, and that the landlord does not possess any proprietary right in the village in which the tenant ordinarily resides and that the landlord desires to let the holding to a tenant who ordinarily resides in the village in which the holding is situated."

The object of this amendment is obvious, it is simply to give preference to a tenant who resides in the village against a tenant who resides in another village ; and it is simply for the purpose of giving land to the residents of the village that the *pahikasht* tenants should be ejected. No long speech is needed ; and I hope that the Council will adopt the amendment.

Hon'ble Sir Sam O'Donnell : The proposal is to insert a clause on the lines of clause 62A (i) (e) of the Oudh Rent Act. In the first place, this amendment is far wider in its scope than the provision in the Oudh Rent Act. It applies to all *pahikasht* tenants, which is not the case with section 62A(e) of the Oudh Rent Act. Again, the honourable member who has moved this amendment has omitted all the safeguards contained in the provisos to clause 62A(e) of the Oudh Rent Act, some of which are very important. Apart from that, Sir, as I explained the other day, this provision in the Oudh Rent Act regarding *pahikasht* tenants is not one which has been justified by the experience of its working. In many cases the *pahikasht* tenant is actually living nearer to his holding than tenants in the village in which the holding is to be found. The provision in the Oudh Rent Act has not, as was supposed at the time, made for more efficient cultivation ; and certainly in Agra it will work most unevenly and most unjustly. It will enable landlords to eject tenants who are just as good cultivators and who are just as much entitled to consideration as tenants residing in the village in which the holding is situated. I must strongly oppose this amendment.

Amendment by leave withdrawn.

Khan Bahadur Shaikh Masud-uz-Zaman : May I at this stage move an amendment of which I have not given notice, Sir?

Deputy President : It is for the House to decide. What is the amendment?

Khan Bahadur Shaikh Masud-uz-Zaman : I wish to suggest that in sub-clause (2) of clause 84 . . .

Deputy President : We have not come to that yet. Is there any amendment to the proviso in sub-clause (1) of clause 84?

There was no other amendment.

Deputy President : Now we come to sub-clause (2) of clause 84.

Khan Bahadur Shaikh Masud-uz-Zaman : I suggest that the word "shall" be substituted by the word "may" at the end of sub-clause (2). My ground for moving this is . . .

Deputy President : Let us first ascertain whether the House gives permission to this amendment being moved. Is there any objection to this amendment being moved?

Some honourable members raised objections.

Deputy President : The amendment cannot be moved.

Question, that clause 84 stand part of the Bill, put and agreed to.

CLAUSE 85.

85. (1) A decree for ejectment under section 84 may direct that the
Decree in suit under section 84.
ejectment of the tenant either from the holding or from such portion thereof as the court, having regard to all the circumstances of the case, may direct

(2) Such decree may further direct that if the tenant repairs the damage, or pays such compensation as the court thinks fit within one month from the date of the decree, or such further time as the court may, for reasons to be recorded, allow, the decree shall not be executed except in respect of costs.

(3) Notwithstanding anything contained in this section, a landholder may, in addition to, or in lieu of suing for ejectment, sue—

(a) for compensation, or

(b) for an injunction with or without compensation, or

(c) for the repair of the damage or waste, with or without compensation.

Mr. Mukandi Lal : I move that all the words occurring after the words "thereof" in line four of sub-clause (1) be deleted and in their place the following words be added:—"as is affected by the decree under section 84." My original amendment was to substitute the words "as is affected detrimentally under section 84." I hope you will allow me to substitute for the words "detrimentally" the words "by the decree" under section 84. As we have already laid under section 83 that a tenant can be ejected either from the larger holding or a portion thereof, these words which occur at the end of clause 85 sub-clause (1) give further power to the collector. The Government no doubt would like to retain this power in the hands of the Collector. But when once we have made it clear that

[Mr. Mukandi Lal.]

it is optional for the Collector either to eject a tenant from the entire holding or a portion thereof, what is the necessity of giving him further discretion. Where is the necessity to allow this discretionary power to be applied at the sweet-will of the collector? My fear is that if we give too much of discretionary power of this nature to the collector it is just possible that an obliging landlord may be obliged by the collector under this section. On the other hand another landlord who is not so obliging to the collector and is of independent disposition may be penalized. Therefore it is both in the interests of the landlords as well as the tenants that no further power be left in the hands of the collector. It is enough that he has got the power to eject a tenant either from the entire holding or a portion thereof. Therefore I hope honourable members will accept my amendment.

Khan Bahadur Shaikh Masud-uz-Zaman : I strongly oppose the amendment for several reasons. One reason is that if a detrimental act has been committed by the tenant on the best portion of the land and the entire holding is one block, I think it will be extremely unfair, not only to the landlord but also to the tenant who may hereafter take that land for cultivation, that the best portion of the land should be allowed to be destroyed and the remaining portion should be left in the hands of that tenant who has deliberately and most cruelly spoiled the land. For instance, supposing a tenant puts a lime-kiln on the very portion of the land which is supposed to be the best land. Supposing he wants to abandon that land and wants to leave it to the zamindar at least for ten or twelve years as a useless piece of land. This sort of thing can be done any moment by a tenant and, in my humble opinion, will act to the detriment not only of the landlord but of the agricultural interests also. In the existing Act we have a similar section, which says that appeals in such cases will go before the High Court for the simple reason that judicial courts are more competent than the revenue courts to decide whether the loss involved affected a portion of the holding or the entire holding. If, however, this power is vested in the collector, I fear it will be used in a most indiscreet manner. For these reasons I oppose the amendment.

Hon'ble Sir Sam O'Donnell : I have endeavoured on previous occasions, but apparently without any effect, to make it clear to the honourable member who has just moved the amendment, that such cases are not tried by the collector, but that they are tried by the assistant collector. Apart from that, it is reasonable that the courts should have discretion. There may be acts, which may be extremely detrimental to the holding, e.g. allowing kankar to be extracted or the building of a brick-kiln, and it may be desirable in such cases that the tenant should be ejected from a larger area than the portion actually affected. There is no reason whatever to suppose that any unjust orders will be passed. The discretion of the courts will be exercised judicially, and, moreover, honourable members will observe that under sub-clause (2) it is provided as follows: "Such decree may further direct that if the tenant repairs the damage, or pays such compensation as the court thinks fit within one month from the date of the decree, or such further time as the court may, for reasons to be recorded, allow, the decree shall not be executed except in respect of costs."

Mr. Mukandi Lal : I find from sub-clause (2), to which the Hon'ble the Finance Member has drawn my attention, that there is enough power vested in the court to penalize the tenant unless he pays compensation to the landlord for the damage done to the holding, and as I apprehend that unless the sub-clause (1) is amended in the manner I have indicated the tenant will be harassed still more, I hope the Council will see the reasonableness of my amendment.

Question, that clause 85 (1) stand part of the Bill, put and agreed to.

Mr. Mukandi Lal : I beg to move that in line 3 of clause 85 (2) the words "two months" be substituted for the words "one month."

In this amendment, I hope, I will obtain the support of the Government. I ask for the extension of the period within which the tenant can pay compensation for any damage which he may have done either deliberately or by mistake. Let me illustrate my point. Supposing a tenant digs a well in the holding, and after he has dug a lot of the ground, he finds that there is no water, or he cannot afford to complete it. In such a case I want that the tenant ought to be allowed sufficient time to fill up the ground, and for this object I consider a period of two months is necessary.

Khan Bahadur Shaikh Masud-uz-zaman : I regret to oppose the amendment. To my mind, if the damage done by the tenant is very serious, he ought not to be given any time to repair it. He should, on the contrary, be at once ejected from the land. The reason why a provision like this has been made in the Bill is that in case the damage done by the tenant is not serious, he may be given some time within which he may be able to make amends for his mistake. It seems to be a logical position. The example that my honourable friend gave was one in which no detrimental act was done by the tenant. If he started digging a well and could not find water in the end, the act is not detrimental. Very often a tube-well is started and it ends in a failure. Nobody can say that it is a detrimental act. If, however, by chance or owing to some ignorance of law a tenant has done something which is not of a very serious nature, he ought to be able to repair such damage or pay compensation within a month. If the act is of a serious nature, even six months will not be enough to repair the damage done. For these reasons I oppose the amendment.

Hon'ble Sir Sam O'Donnell : The defence of the honourable member who moved the amendment reminds me of the excuse of the lady for the baby. She said it was a very small baby. If the honourable members look at clause 85(2), they will find that the court may allow further time if it considers fit. That seems to me to be quite a sufficient safeguard.

Mr. Mukandi Lal : As the Government and my zamindar friends decline to give a long rope to the tenants, I withdraw my amendment.

Amendment was by leave withdrawn.

Question, that clause 85 stand part of the Bill, put and agreed to.

CLAUSe 86.

86. (1) A non-occupancy tenant holding from year to year or under a lease, or for a period which has expired, or will expire, at or before the end of the current agricultural year, shall be liable to ejectment on the application of the landholder.

(2) An heir of a statutory tenant shall, on the expiry of three years from the death of the statutory tenant whom he succeeded under clause 24 or 25, be liable to ejectment on the application of the landholder.

Hon'ble Sir Sam O'Donnell : I beg to move that in line 1 of sub-clause (3) of clause 86 for "three" the word "five" be substituted. This is a consequential amendment on the amendment of clause 20(2).

Question that for the word "three" in line 1 of sub-clause 2 the word "five" be substituted, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in line 1 of clause 86(2) after the word "shall" the words "subject to the provisions of section 20 (2)" be added.

Question that in line 1 of clause 86 (2) after the word "shall" the word "subject to the provisions of section 20(2)" be inserted, put and agreed to.

Pandit Govind Ballabh Pant ; I beg to move that the following be added as sub-clause (3) of clause 86.

"When the landlord seeks the ejectment of a tenant from land which forms part of *sir* within the meaning of clauses (d) and (e) the court shall not eject the tenant if the landlord does not require the land for his personal use and the tenant expresses his willingness to pay such rate of rent as may be fixed by the court; and the court shall, in that case, fix the rent and the tenant will be entitled to hold the land at that rate for seven years."

The honourable members will see that this amendment arises out of clause 4. The reason of this amendment is that under the scheme of this Bill a considerable area is being converted into *sir* which would not ordinarily have acquired that status. I know that ordinarily *sir* means the land over which the landlord has an absolute right and in respect of which the tenant cannot possibly acquire any rights. If honourable members will consider my amendment dispassionately they will see that I do not ask the Council to confer any rights which will secure any permanent fixity for the tenant. Nor do I ask the Council to accept anything that will in any way encroach upon the requirements of the landlord. I only suggest that where the landlord does not require the land for himself, and the tenant says that he is prepared to pay an enhanced rent, then the court may fix a higher rent and the tenant may be allowed to hold possession for seven years. What the landlord gets for the land which he does not require for his own use is rent and nothing else. If he can get rent from the man who is already holding the land, that man should continue in possession rather than a stranger should be substituted in his place. It is on this basis that I am proposing this amendment.

As the honourable members may be aware, under sub-clause (e) there is an unlimited scope for the expansion of *sir*, for the limits that have been imposed can be safely ignored for all practical purposes.

All those limitations are to apply to *sir* that may now be acquired under clause (e) and not under clauses (a) and (d). In these circumstances it seems to me but fair that some sort of relief should be secured for the tenant who is cultivating the land which the landlord does not require for his use. There is provision for statutory tenancy in respect of the present occupants of non-*sir* and non-*khudkasht* lands. But we all

know that in course of time there will be further demand for land. In fact the area that will be available for distributing amongst new tenants hereafter will be very small and restricted. Therefore some sort of safeguard is necessary in order that while the landlord may be secure in the enjoyment of fair rents for the land that he holds irrespective of the period of revision, the tenant who is already cultivating the land may be allowed to continue for some time more if the landlord does not require it for his own use. I therefore appeal to the honourable members of this Council to accept my amendment.

Khan Bahadur Hafiz Hidayat Husain : I regret that I have to oppose the amendment of Pandit Govind Ballabh Pant. This amendment, if carried, would place undue restrictions on the power of the landlord. I do not think that the legislature should so restrict the powers of the zamindars with regard to his demesne. This amendment would also create another class of tenants, and would be tantamount to reverting to seven years lease tenants with a vengeance, with an additional provision of rent being fixed by the court. I do not think that this amendment can be accepted.

Khan Bahadur Maulvi Fasih ud-din : I am sorry that the amendment which has been proposed by the leader of the Swaraj Party is thoroughly unacceptable to all of us, firstly, because it is not equitable and, secondly, because it changes the whole notion of the definition of *sir*. The honourable mover says that this amendment of his does not encroach upon the requirements of the zamindar. I say that it does, and if it does not encroach upon the requirements of the zamindar it does encroach upon the rights of the zamindar. He says that in view of the amended sub-section (e) of clause 4, which gives the zamindars power to acquire *sir* to an unlimited extent, his amendment has been rendered necessary. Sir, I join issue with him when he says that even under the amended clause the zamindar has a right to acquire *sir* to an unlimited extent. There is a scale, and no zamindar can acquire *sir* beyond that limit. Therefore the allegation that the zamindar can acquire *sir* rights to an unlimited extent under sub-clause (e) is not correct. The definition of *sir* has been, from time immemorial, that *sir* land is to be considered as the absolute demesne of the zamindar.

If this amendment is carried and the whole definition of *sir* is changed, it will make a great inroad on the rights of the zamindar. The amendment says that if the zamindar does not require the land for his own purpose the tenant should be allowed to be kept on in the land. It is impossible for any zamindar to prove that he does not require or he does require the land for his own cultivation. The amendment, as it stands, is therefore impracticable, is an innovation and is a very great encroachment both on the requirements and the rights of the zamindar. For that reason I beg to oppose it.

Pandit Nanak Chand : I rise to support the amendment that has been moved by my friend the leader of the Swaraj Party. It has been pointed out by the previous speaker that this will mean a serious encroachment upon the rights of the zamindars and a serious encroachment upon the notions of *sir*. The amendment makes it clear that it is within the power of the zamindars to eject a tenant of his *sir* land if he wants it for his own cultivation. It is only in case where he does not want his *sir* land for his own cultivation that this provision will come in.

[Pandit Nanak Chand.]

Where a zamindar wants to eject a tenant of *sir* land from that holding the court will have to inquire whether the zamindar requires the land for his own cultivation or the zamindar wants to admit a new tenant on enhanced rent, etc. If the zamindar wants to eject a tenant only with a view to let it out to another tenant then I do not see any reason why the old tenant who is already holding should be ejected. If the court considers that the rent which the tenant is paying to the zamindar is inadequate, the zamindar can apply for the enhancement of rent to a fair and equitable rent and if the tenant is prepared to pay that rent then there is no reason whatsoever to eject him and to let it to another new tenant. On these grounds I think the amendment is eminently reasonable, equitable and just and should be accepted.

Hon'ble Sir Sam O'Donnell: It appears to me that as this clause is worded it would amount to something like a conferment of life-tenancy on a tenant in *sir*. That may not be the intention of the honourable mover, but as it is worded that seems to be at least a possible interpretation, because the clause says "when the landlord seeks the ejectment of a tenant from land which forms part of *sir* within the meaning of clauses (d) and (e) the court shall not eject the tenant if the landlord does not require the land for his personal use." The tenant can raise the objection that the landlord does not require it for his personal use. If that objection is upheld, he holds for seven years, and if the landlord then seeks to eject him, the tenant may again raise the same plea. Even if that is not the intention or the effect of the section, it seems to me likely to give rise to a great deal of litigation, because, at any rate on the first occasion when the landlord seeks to eject a particular tenant, that tenant can raise the plea that the landlord does not require the land for his personal use and no doubt the tenant would always raise that plea. Again it will be observed that the clause applies only to *sir* within the meaning of clauses (d) (e). In the immediate future it no doubt will be a fairly simple matter to determine whether any particular area of *sir* is *sir* within the meaning of clauses (d) and (e), but after a sufficiently long period of time has elapsed it may be a very difficult matter; and the result would of course be again an increase of litigation, because it would be open to the tenant to say that this *sir* is not *sir* within the meaning of clauses (d) and (e). Apart from that, it seems to me that even on the more restricted interpretation, the proposal involves a very serious departure from the traditional conception of *sir*. The landlord has always been entitled to eject a sub-tenant of *sir* at the end of the agricultural year and in so far as sub-letting for short periods is concerned, I do not see why there should be any interference with the landlord's discretion. I agree that continuous sub-letting of *sir* is an evil, but I do not think there is any serious danger, of the *sir* referred to in clause (d) being continuously sub-let. I gave my reasons for that view on an earlier debate. I admit that the scale which applies to the acquisition of *sir* has now been altered and altered in a way which I very much regret, and I do not deny that there is danger of more *sir* being acquired than is actually needed and that such *sir* would undoubtedly be sub-let. Nevertheless, though I regret very much that change in the application of the scale, still I am not prepared to accept an amendment of this kind which would apply

also to the very large area under clause 4 (d) in regard to which I think there is no serious danger of continuous sub-letting.

Khan Bahadur Maulvi Muhammad Obaid-ur-Rahman Khan : May I ask how this amendment has been allowed under 186, while the notice has been given under 42B. ?

Deputy President : The honourable member cannot put this question to me. In the first place, nobody in this House objected to its being moved. So far as I am concerned I do not see the remotest objection to its being moved. In fact, this is the proper place for it.

Rai Bahadur Thakur Hanuman Singh : I rise to oppose the amendment which has been moved by Pandit Govind Ballabh Pant. I think the amendment is based on a wrong principle. The idea of *sir* land is that it should be generally cultivated by the landlord. The amendment seeks to provide that during the seven years that a sub-tenant may happen to hold the land, the landlord should not be able to get the land for his cultivation, which appears to be very unfair. The landlords should be allowed to dispose of their *sir* land in any way they choose. It is a fact that the landlords are the owners of the land within their zamindari. If restrictions on their power to lease or to dispose of their other lands have been provided in the Act, then their rights and powers should not be restricted in respect of the land which is given to them under the law as *sir*.

Pandit Govind Ballabh Pant : When I moved this amendment I had hoped that perhaps it might be possible for the honourable members of the House to appreciate my view-point, though I must candidly confess that I was not very confident and I have never been in the course of the deliberations on this Bill. The objections that have been urged are mostly futile. I should not make any secret of the fact that whenever any attempt is made to secure the position of any tenant to any extent whatsoever, to that extent it is an encroachment upon the existing rights of the proprietor, who has an absolute right of dispossession and enjoyment in respect of unprotected land. But the question for determination is whether such a restriction does really take away from the value of the land and make his position in any way intolerable or in any way deteriorate his privilege or take away anything from him of a substantial value. If an arrangement can be made which is equitable and which would serve the purpose of both the parties, certainly it should not be discarded merely on the technical plea that it appears to be some sort of inroad on the existing rights. Moreover, all civil rights are, I think, creatures of Statutes. *Sir* right by itself is not a natural right, it is a right moulded by the various Acts which have given that right in respect of *sir* land; and here a new definition of *sir* is in fact being made in this Bill as land which was not *sir* so far is now to acquire the status of *sir*. In these circumstances, when a new status is being conferred on certain bits of land, which do not belong to the class of *sir* land, I think it is quite fair and equitable that the legislature should make some sort of provision for the proper use of that land in a manner which will conduce to the well-being of the community at large. I admitted at the very outset that so far *sir* has been under the absolute control of the landlord but some regulation of *sir* land is called for now. In spite of all what has been said, I still adhere to the view that the restrictions that have been imposed by the scale for the acquisition

[Pandit Govind Ballabh Pant.]

of *sir* within the meaning of clause (e) are practically meaningless. Under the original scheme all the land which is at present the *khudkasht* of the zamindar was to become *sir* and still there would be some margin for expansion in the future. All the *sir* and *khudkasht* at present in existence has been taken out of clause (e) now so it will enable the landlords to add at least an area equal to the *sir* and *khudkasht* held by them at present to their *sir*. So it will be open to any landlord who chooses to do so to sub-let continuously all the land which they may be holding as *sir* or *khudkasht* when this Act commences and to take under their own cultivation every bit of land they can get hold of, for there is no restriction on sub-letting in respect of the present *sir* and *khudkasht* land and there is a provision enabling them to add further land after continuously cultivating it for ten years. That is to say, that land which is *sir* at present may be sub-let continuously and that every bit of land that falls vacant or he cares to acquire may be cultivated by him and such land will acquire the status of *sir*. I feel in these circumstances that it is very necessary to have some sort of provision to regulate the user of *sir* land and that is the reason why I have proposed this amendment.

I do not think it is necessary for me to dwell on its merits at length. It seems to me that the opposition is due to the prejudiced notion of *sir* land. Honourable members are not paying any heed to the addition that is being made to the *sir* by the present Act and to the fresh provision made in the Bill. The Hon'ble the Finance Member has said that the acceptance of my amendment would be tantamount to conferring life tenancy. Well, if that were the only objection, I would be quite willing to make the language more precise by making a short addition at the end of the clause I have proposed and I would also be prepared to meet other objections of a technical character, but I find that the main objection is not to the language but to the very principle involved in the amendment. In these circumstances it is not necessary to examine the language except for purposes of argument and criticisms. So I leave it at that. I do not think there will be any difficulty in distinguishing the areas mentioned in (d) and (e) and those which have been recorded as *sir* under this section. We have *khassra* numbers and the situation of those plots in the map. When a suit is instituted it would be open to the court to compare the two and to find out whether a particular number of the subject-matter of the suit was or was not *sir*. I do not anticipate much difficulty in that direction, but as I have submitted I find that the objection is to the principle and I remain unconvinced.

Hon'ble Sir Sam. O'Donnell : I have nothing to add.

Question, that a new sub-clause (3) be inserted, put and negatived.

Question, that clause 86 stand part of the Bill, put and agreed to.

CLAUSE 87.

87. (1) An application for the ejectment of a tenant under section 86 shall be made in the months of July, August, or September accompanied by a notice in triplicate and, except as provided below, by a certified copy of the latest *khatauni* filed in the tahsil.

Filing of application
and contents of notice.

Proviso I.—Provided that if the application is made within the prescribed period the court may allow the names of other persons having an interest in the tenancy, or who are for any other reason necessary parties to the proceedings, to be added after such period has expired, and the notice shall be as effectual in respect of all persons so added as if it had been filed within the prescribed period.

Proviso II.—Provided also that where the tenant has been admitted to the occupation of the holding after the period to which the *khatauni* last filed in the tahsil relates, no copy of such *khatauni* need be filed by the landholder.

Proviso III.—Provided also that the local Government may by a rule made after previous publication extend, either generally or in respect of any local area, the time within which applications under this section may be filed.

(2) Every notice under sub-section (1) shall contain the following particulars :—

- (a) the name, description, and place of residence of the landholder ;
- (b) the name, description, and place of residence of the tenant ;
- (c) a description of the holding, specifying the name of the village or mahal and of the pargana or other local division in which the holding is situated, the rent of the holding, and, unless the holding can be otherwise adequately described, the number of each field according to the Government survey ;
- (d) the ground on which ejectment is applied for.

It shall also inform the tenant—

- (e) that if he desires to dispute the ejectment he must contest the notice within thirty days of its being served on him ; and
- (f) that if within thirty days of the service of the notice he appears and admits his liability to ejectment he will not be liable for any costs.

Rai Bahadur Thakur Mashal Singh : I beg to move that in line 5 of clause 87 (1) after the word *khatauni* the words " or *khassra* " be added.

I propose this amendment for the reason that in practice it is found to be very troublesome to obtain a copy of the *khatauni*. One has first of all to make a search in the record room to find out the correct number of the *khata*. This necessitates an application for the inspection of the *khatauni* and then one can apply for a copy after ascertaining the number of the *khata*. This results in delay and extra expenditure. A copy of the *khassra* can be obtained only by quoting the numbers of plots forming a particular holding and that is why this amendment has been brought forward.

Mr. H. A. Lane : Clause 87 deals with applications for ejectment of a tenant from his holding and it provides that a copy of the *khatauni* shall be filed. The *khatauni* is chosen because the *khatauni* is a register of holdings, whereas the *khassra* is a register of fields. It will

[Rai Bahadur Thakur Mashal Singh.]

be very inconvenient for the courts if a copy of the *khassra* is filed, as instead of having all the plots combined together under the serial number of the holding to which they belong, they will have a number of isolated entries which will have to be collected from all over the body of the *khassra*. The honourable mover has said that it is difficult to get a copy of the *khatauni*, but all that is necessary is to ask the patwari what the number of the holding is in the *khatauni*. I do not think that there should be any difficulty unless the patwari is a very unusual kind of patwari. The objection, as I have said, is that it would cause a good deal of inconvenience to courts, and that it is the wrong register of which a copy should be filed in an application for the ejectment of a tenant from a holding. For these reasons I must oppose the amendment.

Hon'ble the President here resumed the Chair.

Rai Bahadur Thakur Mashal Singh: I am not convinced by the speech of the Revenue Secretary. According to his own notions one will have to go to the patwari for ascertaining the number of the *khata*. Sometimes it happens that the arrangement of *khata*s in the *khatauni* is not the same as it was in the last year, so it is possible that there may be some difference in the arrangement of *khata*s in a particular *khatauni*. Besides that, the man who wants a copy of that *khata* will have to tip the patwari. If without doing all these things a man supplies the court with the copy of all the numbers which form that holding I do not see there can be any reason for insisting on a copy of the *khatauni*.

Hon'ble Sir Sam. O'Donnell: Mr. Lane has dealt very fully with this matter, and I think the reasons that he gave were conclusive. I hope my honourable friend will agree on further consideration that they are sound.

Question, that in line 5 of clause 87 (1) after the word "khatauni" the words "or khassra" be inserted, put and negatived.

Question, that clause 87 stand part of the Bill, put and agreed to.

CLAUSES 88 TO 92.

Question, that clauses 88 to 92 stand part of the Bill, put and agreed to.

CLAUSE 93.

93. (1) Every decree or order for ejectment shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, relating to the execution of decrees for delivery of immovable property:—

Mode of execution, of
decree or order.

Provided that before an order of ejectment passed under section 81 (3) is executed, the court shall, if the tenant has not appeared, issue to the tenant the duplicate copy of the notice filed by the landholder under section 81 (2) with an order endorsed thereon informing the tenant that if he desires to show cause why possession should not be

delivered to the landholder he must do so within fifteen days. If the tenant appears and admits the claim, or does not appear within fifteen days of the service of the notice so endorsed, no time shall be allowed under section 82 (4) except with the consent of the landholder, and the order of ejectment shall be executed as hereinbefore provided. If the tenant appears and contests the claim, the procedure shall be as provided in section 81 (5).

(2) Every sub-lessee or transferee of the person to be ejected, whose interest is extinguished on the ejectment taking place, shall, for the purpose of execution of the decree or order for ejectment, be deemed to be a judgement-debtor, but unless he offers resistance or obstruction to delivery of possession, he shall not be liable for costs.

Hon'ble Sir Sam. O'Donnell: The amendment that I wish to move is purely a verbal amendment, simply to correct a misprint. I have not given any notice. We have just noticed that there is a misprint which I wish to correct. In the proviso, line 6, at page 33, substitute "81 (4)" for "82 (4)."

Hon'ble the President: The amendment is that "81 (4)" be substituted for "82 (4)".

CLAUSE 93.

Question, that "82 (4)" stand part, put and negatived.

Question, that for the figures so struck out "81 (4)" be inserted, put and agreed to.

Question, that clause 93, as amended, stand part of the Bill, put and agreed to.

Question, that clause 94 stand part of the Bill, put and agreed to.

CLAUSE 95.

95. Any person against whom decree or order of ejectment from a holding or any portion thereof has been executed under the provisions of this Act, who re-enters or attempts to re enter into occupation of the same without the written consent of the person for the time being entitled to occupy the same, shall be presumed to have done so with intent to intimidate or annoy the person in possession, within the meaning of section 441 of the Indian Penal Code.

(2) Where a person is convicted of an offence of criminal trespass in the circumstances stated in sub-section (1), and it appears to the court convicting him that any person has, by reason of anything done in the course of committing the offence, been dispossessed of any land, the court may, if it thinks fit, order the dispossessed person to be restored to the possession of the same.

Babu Nemi Saran: I beg to move that the whole clause be deleted.

The clause for the omission of which I am moving is a new clause which does not find a place in the present Act, Act II of 1901. The principle on which this clause is based seems to me to be a dangerous and mischievous one. By a civil enactment we want to create certain acts

[Babu Nemi Saran.]

as presumptions of criminal acts. If you read clause 95 you will find that it is laid down therein that "any person against whom a decree or order of ejectment from a holding or any portion thereof has been executed under the provisions of this Act, who re-enters or attempts to re-enter into occupation of the same without the written consent of the person for the time being entitled to occupy the same, shall be presumed to have done so with intent to intimidate or annoy the person in possession, within the meaning of section 441 of the Indian Penal Code." By this enactment we are creating a presumption in respect of certain acts which a person might have done. We know, Sir, that generally people are admitted by zamindars to their holdings not by written permission. Generally the practice is that tenants are asked to write *kabuliyats*, which they get from the zamindar, and the zamindar does not give anything in writing in return to the tenants. If a tenant is ejected and he wants to re-enter the holding, he is generally allowed to do so by the implied consent of the zamindar, and I think if the present provisions of the Bill are allowed to stand they would create a havoc in that they would empower the zamindar to allow the tenant by his implied consent to re-enter the holding and six months later to go to the criminal court and say that such and such a person entered the holding without consent and therefore he is presumed to have acted in a way which amounts to a criminal offence under section 441 of the Indian Penal Code. This, Sir, interferes with the power of the criminal courts which is in no way justifiable. If we look to the procedure that is generally followed in criminal courts, we find that no presumption against the accused is allowed unless it is proved beyond doubt, and the benefit of doubt is always given to the accused. In this case we are reversing that process and the law says that certain presumption shall be made and the accused should be there to rebut that presumption. I say, Sir, that this provision would prejudicially affect the position of the tenants. The words "written consent" make it all the more mischievous. As I have just said, generally no written consent is given by the zamindar to a tenant to enter his holding. It is generally done by the implied consent of the zamindar; i.e., he pays rent to the zamindar and he is allowed to cultivate the holding. Therefore what I mean by my amendment is that we should allow the *status quo* and that we should not encroach on the rights of the tenants and make them criminally liable for acts which they might have done in good faith. No statistics can be given of cases which might have come before criminal courts in regard to which this presumption is allowed, which would justify the insertion of this provision here. I know there are many cases in which a zamindar finds it sometimes difficult to eject a tenant from his holding when he has been once ejected by a decree of the revenue court; but, Sir, there are many other provisions which the zamindar might take advantage of. He can go to the civil court and have him ejected; and he can sue him for compensation and he can run him under many other sections. But to create a presumption against a tenant by inserting this provision is a very serious matter and it should not be allowed to be introduced in this Bill. Therefore I beg to move that this clause be omitted. I hope honourable members of the zamindar party would think that they have as yet found no difficulty with the present provisions of the Act in which this clause did not find a place.

Mr. R. Burn : I rise to support the retention of this clause in the Bill. Anyone who knows the provisions of the Bill about the ejectment of tenants knows that there is a certain number of people who after ejectment in a perfectly legal manner still retain possession of the holding. We constantly have cases in which the landlord has got a decree for ejectment, has obtained formal possession and the tenant still holds on. The landlord then goes to the civil court, sues him as a trespasser and the man says that he has been re-admitted and the civil court refers him back to the revenue court to establish his claim to have been re-admitted as a tenant and litigation is prolonged. I think there is no doubt that if the short, sharp remedy of criminal prosecution and conviction were applied many of those cases would be stopped at a much earlier stage. The honourable mover seems to think that a provision of this kind is an entire innovation. If he will turn to section 149 of the existing Tenancy Act he will find that a very similar provision already exists in the case of people who dishonestly distrain property or resist a distraint. If these cases are taken to the criminal courts at present the general reply of the accused is :—" I am simply asserting my undoubted rights." The magistrate says :—" Well, there may be something in this claim of right and it is not for me to decide on what really is a civil question." All that clause 95 does is to say that when a person has been ejected and re-enters without the written consent he shall be presumed to have done so with intent to intimidate or annoy the person in possession. I do not believe that the majority of the tenants in the province of Agra who are ejected are habitually deceived over the matter of re-admission. The honourable mover said that consent may be implied by the receipt of rent. I think he is probably referring to the fact that ejectment may take place at a time when crops are standing in a field. In a case like that, the tenant, if no arrangement is made for the purchase of the crop, may remain in possession of the land and the landlord is entitled to payment for the use of the land during that period. That, however, does not constitute re-admission. The draft clause seems to me to be a very useful one—one which will tend to prevent a great deal of useless litigation.

Rai Bahadur Thakur Hanuman Singh : The section as it stands is very, very, necessary to control the unruly tenants. I have very great and bitter experience of such tenants who after ejectment always take possession of the land from which they are ejected. The landlord has to go either to the revenue or to the civil court to dispossess them. I may be permitted to compare such tenants with flies which again and again attack the face even after they have been driven off. I have known cases of such tenants occupying the land, not once after ejectment, but several times. They have to pay compensation under the orders of the civil courts, but even then they are not deterred from re-entering the land. I think the provision is very necessary and it should be retained as part of the law which we are now enacting.

Babu Nemi Saran : I tried to find out from the speeches which have just been delivered whether there were any reasons which would make me to change my views, but I am sorry to say that I did not find a single reason. If you look at the present Act you will find there is section 103 in which there was a provision which a tenant may use when there is the question of extortion of rent by the zamindar. But that provision has been easily taken out of this Bill and in its exchange perhaps this clause

[Babu Nemi Saran.]

has been inserted to make the position of the tenants worse than what it is at present. Mr. Burn has referred to certain provisions in the present Bill regarding distraint in which certain acts which might be done by a tenant in opposing distraint or doing something mischievous which are liable to criminal punishment. So far I agree that you should make certain actions of a tenant or a zamindar punishable by criminal law which contravenes the legal provisions of this Act. But to raise a presumption against the accused is certainly not one which is desirable. If this section had only said that any person who persists in the occupation of the land from which he has been ejected he shall be guilty under section 441 of the Indian Penal Code, I should have no objection whatsoever, because in that case the tenant would have been at liberty to put in any defence he likes. There would have been no question of any presumption against him. Here what the law says is that he would be criminally liable according to the provisions of the Indian Penal Code. At the same time this Act of his would be taken as presumption against him which he would be required to rebut. As I said before, had this provision not been here the position would have been like this. A zamindar who finds himself in such a condition that his tenant is resisting him in giving possession of the holding from which he has been ejected, he would come up to the criminal court and would file a criminal complaint under section 441 of the Indian Penal Code, and then the tenant against whom an application has been filed will come and put up his defence, the burden of proof lying on the zamindar who has filed the complaint. Here the process is reversed. The very fact that he is in possession of the holding amounts to a presumption in favour of the complainant and against the accused. The tenant can give no evidence worth the name, as he cannot offer any negative evidence. The only evidence which is admissible is a written counterpart of the lease. My contention is that in such cases the burden of proof should lie on the complainant as in criminal cases, and not on the tenant.

The chief sting in the clause lies in the word "written." As I have already said, it is only in very rare cases that the written consent is given by the zamindars. Generally they consider it derogatory to put their signature down on the counterpart of the lease, and indeed in the majority of cases, they keep back the counterpart of the lease. Imagine the case of a tenant who re-enters the holding with the consent of the zamindar, but the consent is not written. After, say, three months the zamindar comes down upon him and sues him in court under section 441 for having entered the land without his written consent, and in such a case it is very difficult for the unfortunate tenant to rebut the alleged presumption. For these reasons I submit that the clause should be deleted, as it is likely to be misused by the zamindars.

Question, that clause 95 stand part of the Bill, put and agreed to.

NEW CLAUSE.

Pandit Govind Ballabh Pant: I beg to move at this stage that a new clause be added after clause 95, as my amendment No. 131 comes in more appropriately here than after clause 93, which the Council has already passed.

Hon'ble the President: It is true that notice of this clause was given in time, but as the amendment stands at a different place, quite

unconnected with the clause under consideration, I can allow it to be moved if the Council has no objection.

Some objections were raised.

Hon'ble the President: There are objections to the moving of this amendment here, and it cannot be moved, unless I suspend the Standing Orders.

Pandit Govind Ballabh Pant: I request you to suspend the Standing Orders.

Hon'ble the President: I hope there is no objection to my suspending the Standing Orders. Technically speaking only, the notice has not been given in time, because the amendment sought to be moved is in a place different from where it appeared in the list. It may be unfair to other members of the House who may have left thinking it was not coming.

The Standing Orders having being suspended, Pandit Govind Ballabh Pant was allowed to move his motion.

Pandit Govind Ballabh Pant: I beg to move that the following clause be added:—

“Where an order is passed for the ejectment of a tenant on the ground of non-payment of arrears of rent or a decree for arrears of rent is sought to be executed by means of the ejectment of the tenant, the tenant shall not be ejected if he pays up the amount of the decree with cost including costs of execution, if any, before he has been ejected in execution of such decree or order.”

I do not think it is necessary for me to say many words in support of this proposition. When a tenant is sought to be ejected because he has not paid the arrears that are due from him, I think it is but fair that if he makes up for his dereliction by paying up the amount he should not be ejected from his holding. After all the holding is of a much greater value than the amount which he has to pay. If this course is adopted, I do not think there can be any injury done to anybody. In view of the amendments made in the previous clause which have reduced the period of grace, which the court could grant to the tenant, from six months to three months, it seems to me absolutely necessary that a provision of this character should now at least be introduced in this Bill.

Mr. B. Burn: The great objection to this proposal is that it gives an entirely indeterminate period and it will generally lead to corruption. Many of these cases come up before me for revision. The man does not pay within the time given to him by court and then he tries to get his ejectment reversed in some manner. He tries to persuade the amil not to visit the village to deliver formal possession, or in other ways he tries to get the case postponed. A certain limit is put by law and the court dealing with the case gives a certain time to pay up the money, and it seems to me entirely wrong that there should be this more or less informal period not strictly defined within which the judgement-debtor may still pay up the money.

Khan Bahadur Shaikh Masud uz-Zaman: The first reason why I cannot accept the amendment is that the zamindar will never know when to make arrangements for leasing out the land from which the tenant is going to be ejected, unless a definite time is fixed for his ejectment. My second objection is that the tenant will be incited not to leave the

[Khan Bahadur Shaikh Masud-uz-Zaman.]

holding so long as he can help it. The result will be that the zamindar will be put in a very awkward position about leasing the land, if he is not able to do so at the beginning of the season. No tenant likes to take land in the middle of a season. It is why the ejectments take place at the end of the season. For these reasons I oppose the amendment.

Pandit Nanak Chand : The Senior Member of the Board of Revenue has pointed out that if this amendment is accepted, it will lead to corruption amongst officials, as the tenant will sometimes try to get the case postponed and sometimes he will collude with the amin. Even if this amendment is not passed, these possibilities will still exist as they exist even now. The cases can be postponed through corruption even now. As regards the tenants colluding with the amin, that too is not convincing. When the order of the court ejecting a tenant is passed and the amin is required to deliver possession to the zamindar, he is expected to comply with the order of the court within a certain reasonable time. If the amin makes default, or does not do it within a reasonable time he can be required by the court to explain his conduct, and thus any chance of corruption can be minimized if not prevented. Even now there is nothing to prevent a tenant from colluding with the amin and delaying the delivery of possession for a few days and in the meantime to make arrangements for the money and to deposit it.

Mr. B. Burn : May I point out that the amin is not authorized to take money?

Pandit Nanak Chand : I know, Sir, that in the case of revenue court decrees the amin is not authorized to take money, but in the case of civil court decrees amins are authorized to stay the sale in execution of a decretal amount up to the last moment. It is not surprising if the poor tenants with their limited credit are unable to arrange to pay up money by a certain fixed date in spite of their best endeavours, and it is with a view to bring relief to them that this amendment has been moved. If the zamindars are really anxious for the arrears that are due to them, then they should support the amendment. If, however, they want to eject the tenant in spite of the fact that he is generally willing to pay off the arrears then it is a different matter.

Pandit Govind Ballabh Pandit : I am really unable to understand the position of the Government, especially in view of the amendments restricting the power of courts to extend time to enable the tenant to pay up the money. In civil courts the ordinary practice is that when a decree for money is passed if the man concerned pays up the money before the property is finally sold, then the sale is stopped. Even if he pays up the money after the sale has been effected but within thirty days of it, then the sale is set aside. In this case the extreme penalty is being imposed because the man has defaulted in point of time in paying his dues. Such an irregularity is not unusual among better situated classes, and is it just then, to deprive a tenant whose resources are practically nil of his holding, to forfeit his means of living and to give him no opportunity for making amends for the little omission on his part? I can understand that the landlord should get his money. I can understand that he should get his money by an application and not by a suit. I can understand that the time given to the tenant should not be of such an unusual length as will embarrass the landlord unduly. But I cannot at all understand that when a man

moves the cause which involves forfeiture of his livelihood, he should still be subjected to penalty. When a person pays the money due by him with full cost, I do not see any difficulty in his being allowed to continue in possession. I do not think that this will in any way embarrass or inconvenience the landlord, who has to give his holding to another man after the old tenant has been ousted, and if the old tenant pays his dues, he should not be ejected.

Hon'ble Sir Sam O'Donnell: Apart from the objections pointed out by Mr. Burn, it seems to me that it is open to objection on grounds of principle. The court should certainly allow a tenant a reasonable time for making payment, and I quite agree that the time allowed in the previous provisions is inadequate. It has been cut down from six to three months, very much to my regret. Nevertheless, it does seem to me that once a decree has been passed or the final order for ejectment has been made, it ought to be enforced. I think it is undesirable, as Mr. Burn has pointed out, to have an indeterminate period. It must be remembered that a landlord has to make arrangements when a tenant is going to be ejected, and by the time the final decree or order has been passed he has probably made such. Therefore, Sir, very much as I regret the cutting down of the period which the court may allow, I do not think that in principle this proposal is sound.

Question put, that the amendment moved by Pandit Govind Ballabh Pant, be inserted.

The House divided: Ayes 19; Noes, 47.

Ayes.

Babu Narayan Prasad Arora.
Babu Mohan Lal Saksena.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Pande.

Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhya.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Maulvi Zahur-ud din.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Sa'id Khan. **Almad**
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Fillson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Hercheröder.
Rai Jagdish Prasad Sahib.
Rai Sahib Chaudhri Sheoraj Singh.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rao Sahib Kunwar Sardar Singh.

Raja Sri Krishna Dutt Dubo.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Partap Narayan Singh, Rai Bahadur.
Raja Indrajit Pratap Bahadur Sahi.
Bhaya Hanumat Prasad Singh.
Kunwar Surendra Partap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hassan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Faziz Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Dr. Shafiat Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Rasid-ud-din.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Hussain Mirsa.
Khan Bahadur Munshi Siddiq Ahmad.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

CLAUSE 96.

Question, that clause 96 stand part of the Bill, put and agreed to.

CLAUSE 97.

97. (1) (a) If on the date of actual delivery of possession to the landholder there are ungathered crops or other products sown or planted by the tenant either before the date of the decree or order for ejectment, or after such date with the permission in writing of the landholder, the landholder shall have the option of purchasing the same, and upon his forthwith tendering to the tenant the price of the same the right of the tenant to such crops or other products and to use the land for the purpose of tending, gathering, and removing the same, shall cease.

(b) If the landholder does not elect to purchase the same, the tenant shall be entitled to use the land as aforesaid for a further period until such crops or other products have been gathered and removed, paying a fair rent therefor.

(2) If on the date of the actual delivery of possession to the landholder there are upon the land ungathered crops or other products sown or planted by the tenant after the date of the order for execution of the decree or order for ejectment without the permission in writing of the landholder, the tenant shall have no right in such crops and the title to them shall pass to the landholder with the land.

Hon'ble Sir Sam O'Donnell: I have a purely formal amendment, that in line 4 after the word "date" the words "of the order for execution" be inserted. This is merely intended to make sub-clause (1) consistent with sub-clause (2).

Question, that in line 4 after the word "date" the words "of the order for execution" be inserted, put and agreed to.

Question, that clause 97, as amended, stand part of the Bill, put and agreed to.

CLAUSE 98.

Question, that clause 98 stand part of the Bill, put and agreed to.

CLAUSE 99.

99. (1) Any tenant or rent-free grantee ejected from, or prevented from obtaining possession of, his holding or any part thereof, otherwise than in accordance with the provisions of this Act, by—

(a) his landholder or any person claiming as landholder to have a right to eject him, or

(b) any person claiming through such landholder or person, whether as tenant or otherwise,

may sue the person so ejecting him or keeping him out of possession —

(i) for possession of the holding;

(ii) for compensation for wrongful dispossession; and

(iii) for compensation for any improvement he may have made:

Provided that no decree for possession shall be passed where the tenant, at the time of the passing of the decree, is liable to ejectment in accordance with the provisions of this Act within the current agricultural year.

(2) If the decree is for possession, no compensation for an improvement shall be awarded.

(3) When a decree is given for compensation for wrongful dispossession but not for possession, the compensation awarded shall be for the whole period during which the tenant was entitled to remain in possession.

(4) A tenant who has sued for possession only shall not be entitled to institute a separate suit for compensation for wrongful dispossession, or for an improvement, in respect of the same cause of action.

Khan Bahadur Hafiz Hidayat Husain: I move that the following explanation be added after the end of the clause:—

“EXPLANATION.—Landholder means and includes a lambardar in villages where either by contract or custom the lambardar is entitled to realize the whole rent of the tenants and eject them.”

In the old equivalent section 79 of 1901 the same word “landholder” is used, and it is stated there that “A tenant ejected, otherwise than in accordance with the provisions of this Act, may sue his landholder.” This word “landholder” has been variously interpreted by the Board of Revenue and the High Court. In the High Court as also in the Board of Revenue it was sometimes held that the word “landholder” in this section may also mean any co-sharer. The result was that if a co-sharer, otherwise than a lambardar ousted a tenant, the revenue court having alone jurisdiction, the remedy of the tenant was barred after the lapse of six months.

If the Government thinks that the word “landholder” is sufficiently clearly defined so as to mean only the lambardar in villages where a lambardar alone has authority to realize rent, this amendment is not necessary, otherwise the explanation may be added.

This amendment is more in the interests of the tenant than the zamindar.

Mr. R. Burn: I think perhaps the honourable mover has overlooked the provision of clause 265 of the Bill. That clause overrides the decision of the Board of Revenue to which the honourable member referred. It was held by the Board of Revenue that the lambardar, regarded simply in his capacity as lambardar, is not *prima facie* under the existing law entitled to collect rents, that is to say under the existing law if the right of the lambardar to collect rents is contested the onus is on him to show that he has been authorized by the whole body of co-sharers. Under clause 265 of the Bill, however, the lambardar has been declared to be entitled to collect rents and other dues in the absence of a contract to the contrary. That is to say, the onus will be on the other person to prove it. I think this change in the law really meets the desire of the honourable member in regard to clause 99.

Khan Bahadur Hafiz Hidayat Husain: In view of what has been said by Mr. R. Burn, I beg to withdraw my amendment.

Amendment, by leave, withdrawn.

Question, that clause 99 stand part of the Bill, put and agreed to.

CLAUSES 100 TO 106.

Question, that clauses 100 to 106 stand part of the Bill, put and agreed to.

CLAUSE 107.

107. (1) Subject to the provisions of sub-sections (2) and (3), a tenant who ceases to cultivate his holding without arranging for the payment of his rent as it falls due and giving written notice to the landholder of such arrangement shall be presumed to have abandoned his holding.

Abandonment.

Explanation.—A tenant does not cease to cultivate his holding if he leaves a member of his household or a hired servant in charge of it.

(2) A tenant who ceases to cultivate his holding and without executing a written sub-lease leaves in charge of his holding any person belonging to one of the following classes in the order of succession provided in section 24, to wit, classes I, II, III, IV, V, VII, and X, on whom, in the event of the tenant's death, the tenant's interest would devolve shall, if he does not resume cultivation within five years, lose his interest in the holding, and the person left in charge thereof shall succeed to the holding.

(a) if the holding is held with a right of occupancy, as a tenant with a right of occupancy,

(b) if the holding is held with statutory rights, as heir of the statutory tenant.

(3) A tenant who ceases to cultivate his holding and without executing a written sub-lease leaves in charge of the holding a person other than one of the persons mentioned in sub-section (2) under an arrangement to which the landholder has not agreed in writing shall be presumed after the expiry of the period for which the tenant could have sub-let to have abandoned the holding.

(4) Where a tenant is presumed to have abandoned his holding the landholder may file a notice in the office of tahsildar for service on the tenant or publication stating that he wishes to treat the holding as abandoned and is about to enter on it accordingly and the tahsildar shall cause a notice to be served or to be published in such manner as the board by rule direct. After filing the notice the landholders may, in any year between May 15 and June 30, enter on the holding and let it to another tenant or take it under his own cultivation.

(5) Where a tenant sues under section 99 for recovery of possession of a holding on which the landholder has entered under the provision of sub-section (4), and the tenant satisfies the court that he has not in fact abandoned his holding, the tenant shall be entitled, subject to the provisions of sub-section (1) of section 99 to reinstatement on such terms as the court may think fit. *

CLAUSE 107.

Rai Sahib Lala Jagdish Prasad : I beg to move that on page 36 in line 2 omit the following figures and word : " VII and X." With the amendment that has been made to section 24, class X automatically goes out. As regards class VII, I consider that a collateral male relative is invariably a man earning an independent livelihood and as such should not be allowed to inherit an abandoned tenancy.

I, therefore, move the deletion of these two classes.

Hon'ble Sir 'Sam O'Donnell : The honourable member, I think, is right in moving the omission of class X, but apparently he wishes also to move the omission of class VII as contained in the amendment which was accepted by the Council. Class VII in the original Bill referred to the daughter's son. Class VII in the amendment relates to the nearest male collateral relative. He wishes to omit that class. I can see no principle on which that should be done. I cannot see why in connexion with this clause we should make an exception against the nearest male collateral relative. I beg to move that class VI be added to this clause

Rai Sahib Lala Jagdish Prasad : I think that a nearest collateral male relative should have no right to inherit an abandoned holding. Of course, succession under section 24 is a different matter but succession in the case of abandoned holdings ought to be governed on different lines and I am of opinion that a nearest collateral male relative, who is altogether an independent person, should not be allowed to inherit an abandoned holding.

Question, that class VI be added to clause 107(2), put and agreed to.

Question, that class X stand part of clause 107(2), put and negatived.

Hon'ble Sir Sam O'Donnell : I beg to move that at the end of sub-clause (b) the following be added as sub-clause (c) :—

" if the holding is held with neither a right of occupancy nor statutory rights, as a non-occupancy tenant."

This involves no change in principle. It is designed to make the Act more clear. It is intended to remove an obvious lacuna in sub-clause (2).

Question, that at the end of sub-clause (b) the words " if the holding is held with neither a right of occupancy nor statutory rights, as a non-occupancy tenant " be inserted as sub-clause (c), put and agreed to.

Pandit Nanak Chand : I beg to move that in line 6 of sub-clause (3) of clause 107 for the words " the period for which the tenant could have sub-let " substitute the words " one year." If a tenant sub-lets land for more than a year, he ought to do it by a written lease, in which case such lessee will be entitled to hold the land for the term of the lease up to the period for which sub-letting is allowed to various classes of tenants. But if he has not sub-let it under a written lease, he could do it only for one year and I do not see any reason why this person who holds without a written lease should hold for more than one year. He is not one of the heirs who would ultimately succeed to the holding; he is an absolute stranger and the sooner he is required to leave the holding, the better it is in the interest of the zamindar so that he may let it out to some other person.

Hon'ble Sir Sam O'Donnell : It is unusual to find the honourable member coming forward as the champion of the zamindars. The Select Committee agreed to substitute " the period for which the tenant could have sub-let " for " one year " and I think the Council might agree with the Select Committee.

Rai Sahib Lala Jagdish Prasad : I gave notice of a similar amendment, but instead of moving that I rise to support the amendment which has just been moved by my friend Pandit Nanak Chand. Sub clause (3) says :—

" A tenant who ceases to cultivate his holding and without executing a written sub-lease leaves in charge of the holding a person other than one of the persons mentioned in sub-section (2) under an arrangement to which the landholder has not agreed in writing." Now, this is a person who has not been given a written sub-lease by the tenant who abandoned the holding; further, he is not the person who was entitled to inherit under sub clause (2), and thirdly, he is a person who has been left in charge under an arrangement to which the landholder has not agreed in writing. That is to say, the landholder too has not given his consent to this man. So this man, I think, deserves absolutely no sympathy

[Rai Sahib Lala Jagdish Prasad]

from the House. He is a different man altogether. He is neither the man to whom the original tenant gave a sub-lease in writing nor any of his heirs who are entitled to inherit under sub-clause (2) nor a person whom the zamindar wants, so I think he should not be allowed to continue in possession of the holding for more than a year. One year's time is quite enough for him to arrange to vacate the holding.

With these words, I support the amendment of my honourable friend.

Hon'ble the President: The amendment is that for the words "the period for which the tenant could have sub-let" substitute the words "one year."

Question, that the words "the period for which the tenant could have sub-let stand part of the Bill, put and agreed to.

Rai Sahib Lala Jagdish Prasad: I beg to move that for sub-clause (5) as now exists in the Bill substitute sub-clauses (5) and (6) as they stood originally in the Bill that was introduced in the Council.

Hon'ble Sir Sam O'Donnell: Is that in proper form. Sir?

Hon'ble the President: I am afraid this is irregular. The honourable member ought to have given notice of the exact terms of his amendment.

Rai Sahib Lala Jagdish Prasad: Can I not read out the clauses from the original Bill?

Hon'ble the President: It cannot be done now.

Honourable members must remember that we are dealing with a piece of legislation in which every word has to be scrutinized and honourable members have got to be very definite as to where they propose an amendment, and in what form. We cannot have tinkering here and there. I am sorry to have to rule out Rai Sahib Lala Jagdish Prasad, but I cannot help it.

Question, that clause 107, as amended, stand part of the Bill, put and agreed to.

CLAUSE 108.

108. Notwithstanding anything contained in sections 103 and 107,

Right of suit of success-
nor to holding.

any person claiming to be entitled under sub-section (1) of section 25 to succeed to a holding which has been surrendered or abandoned may bring a suit for the possession of such holding.

Rai Sahib Lala Jagdish Prasad: I beg to move that clause 108 be omitted. I think that this clause is entirely against justice and equity. When a tenant has a right of surrendering or abandoning his holding under sections 103 and 107 and when section 107 allows the devolution of the tenant's interest to certain heirs I fail to see the equity of providing that notwithstanding anything contained in sections 103 and 107, any person claiming to be entitled under sub-section (1) of section 25 to succeed to a holding which has been surrendered or abandoned may bring a suit for the possession of such holding. That is to say, when a number of heirs have already been provided to succeed to an abandoned holding under section 107, no other person besides them ought to be entitled to claim it. Secondly, no devolution of interest is provided anywhere in the case of surrender.

Why should section 108, therefore, extend to the cases of surrender also? Of course section 25(1) is independent of this sections. So I think that this section is not only superfluous, but it is preposterous and ought to go. I therefore move that the section be omitted.

Hon'ble Sir Sam O'Donnell: The Council has accepted clause 25(1) and clause 25 (1) gives a certain person a right, whereas clause 108 simply gives that same person a right to sue to enforce his right. It will be entirely illogical to omit clause 108 when we have accepted clause 25 (1).

Rai Sahib Lala Jagdish Prasad: I think that section is quite independent of this section and if this section does not stand, even then the meaning of section 25(1) is clear. I therefore submit that this section ought to be deleted.

Hon'ble the President: The amendment is that clause 108 be deleted.

Question put, that clause 108 stand part of the Bill.

The House divided: Ayes 45; Noes 25.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Mahamunad Ahmad Sa'id Khan.
Hon'ble Rai Rujeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf,
Mr. G. B. Lambert,
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. F. Herchovröder.
Mr. H. David.
Babu Khem Chand.

Babu Narayan Prasad Arora.
Babu Mohan Lal Saksona.
Baba Bhagwati Sahai Bodar.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand
Rai Bahadur Pandit Kharagjit Misra.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhannu Lal Pandey.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Pahlwal.
Babu Parsidh Narayan Anand.
Pandit Yajna Narayan Upadhyaya.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Dr. Jaikaran Nath Misra.
Maulvi Zahur-ud-din.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Noes.

Rai Jagdish Prasad Sahib.
Rai Sahib Chaudhri Sheoraj Singh.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Boargava.
Rao Sahib Kunwar Sardar Singh.
Raja Sri Krishna Dutt Duba.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Rai Bahadur Thakur Mashal Singh.
Kunwar Surendra Pratap Sahi.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.

Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Sheikh Mazid-uz-Zaman.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saifid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Hussain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.

MOTION FOR ADJOURNMENT.

Hon'ble the President: A notice of motion for adjournment has been given to me by Khan Bahadur Maulvi Fasih-ud-din and Rao Sahib Abdul Hameed Khan separately. This is the proper place, I think, to

[Hon'ble the President.]

discuss that motion, I may remind the honourable mover that under the Standing Order 7A it is for him to make a brief speech and for the opposer (if any) to make a brief speech and there can be no discussion on this motion for adjournment.

Khan Bahadur Maulvi Fasih-ud-din : I beg to move that the consideration of this Bill be adjourned to the 24th of July.

Sir, as has been suggested by you, I will be very brief. I do not put up this motion in the spirit of a school-boy who wants to enjoy a holiday or even in the spirit of an official who is anxious for temporary freedom from his exacting work; nor do I mean by putting up this motion to retard the passage of this Bill through the Council. But I do so simply because many of us cannot possibly afford to stay on these Olympian hills continually for a sufficiently long time and we cannot afford to cut ourselves off from our homes, especially in these days of agricultural activities at the commencement of the rains and also in view of the election campaign that is going on and also in view of the coming *Muharram*. Sir, we find that many of us have already left . . .

Hon'ble the President : This may have an injurious effect on their election campaign—honourable members going away.

Khan Bahadur Maulvi Fasih-ud-din : The few that are left here might be leaving tomorrow or the day after. It will be no use discussing such an important measure as this Bill in a chamber with empty benches. We find that the preliminary committee of Sir Selwyn Fremantle finished its labour in June of last year and it took Government about ten months to make up their minds as to the shape in which this Bill should be presented before the Select Committee. I concede that we have been proceeding rather slowly in connexion with the preliminary sections of this Bill, but this was inevitable, as those sections form the very soul of the Bill. After section 50 we have been proceeding with this Bill not with the speed of the tortoise as we were doing before but with the speed of the railway train. And if we go on like this I think it will take us about a week at the outside to finish this Bill. Therefore this temporary cessation that we want for the sake of the *Muharram* chiefly will not be out of place.

Sir, I find that there is a lurking suspicion in the minds of some of us that the *Muharram* is the show of the Shiabs only. That, I submit, it not the fact.

Hon'ble the President : It is not necessary to go into this question now.

Khan Bahadur Maulvi Fasih-ud-din : I will only content myself with saying that as the *Muharram* is celebrated in connexion with the martyrdom of the grandson of the Prophet, therefore it concerns all of us, whether Shias or Sunnis, that are interested in it and who consider it against their religious conscience to work at least in the Council during the first ten days of the *Muharram*. I mean to say that some of us might be compelled to work as Government servants in those days, but we are not all inclined to take up work of this kind during the *Muharram*. Sir, it should not be forgotten that the late Mr. Justice Mahmud in his *obiter dictum* brought out this point very forcibly in connexion with the controversy that he had with Sir John Edge, and he proved to the hilt that Muhammadans had conscientious scruples to take up any kind

of work during the first ten days of the *Muharram*. It is for these reasons and on these grounds that I stand here today and I think that although we are in a minority and although we cannot carry everything in this Council with our unaided votes, I hope that our colleagues in the Council will support us in this matter, especially when they are themselves tired of sitting in this Council from 11 o'clock till 5 o'clock continually for so many days.

With this little speech, I support this motion of mine.

Hon'ble Sir Sam O'Donnell: I regret to say that I have to oppose this motion. I should not have objected if the motion had been that we sit only on Monday and Tuesday following. I should much prefer, of course, to sit up to the 17th, but I should not have objected if the motion for adjournment had been simply that we adjourn after next Tuesday. The honourable member who has moved this adjournment has given three reasons. One was that agricultural operations were pending. I am afraid I cannot take that argument very seriously. The second was that the elections were coming on. But we shall be nearer the elections in August than we are now. That argument therefore does not appeal to me. The third argument, of course, stands on quite different footing, i.e., the *Muharram*. I recognize that, and I am not suggesting that we should sit every day during the *Muharram* except on the gazetted holidays although, of course, public offices will be open on every day except the four gazetted holidays. The distinction which the honourable member drew between public work in the Council and the public work carried on in Government offices is one which I cannot appreciate. I think, Sir, that even my Muhammadan friends would not in any way be seriously inconvenienced if we were to sit on Monday and Tuesday. We have not made very rapid progress with this Bill and we have three other Bills in front of us. I do not think anybody desires that the session should be prolonged into the month of August when the climatic conditions of this place will be bad and when, as I have already said, we shall be nearer the coming elections than we are now.

Question put, that the consideration of the remaining clauses of the Agra Tenancy Bill be adjourned to July 24, 1926. The House divided: Ayes, 37; Noes, 20.

Ayes.

Mr. H. David.
Babu Mohan Lal Saksena
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Rai Jagdish Prasad Sahib.
Rai Sahib Chaudhri Sheraj Singh.
Pandit Nanak Chaud.
Thakur Rajkumar Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Pandit Jhauni Lal Pande.
Babu Parsidh Narayan Anad.
Raja Srikrishna Dutt Dube.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravj Pratap Narayan Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Mr. Mukandi Lal.
Dr. Jaikaran Nath Misra.
Kunwar Surendra Pratap Sahi.

Khan Bahadur Mr. Muhammad Aslam Saiji.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Mahammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafez Hidayat Husain
Khan Bahadur Shaikh Masud-uz-Zaman.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Husain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Nces.

Hon'ble Sir Sam O'Donnell.	Mr. H. A. Lane.
Hon'ble Lieut. Nawab Muhammad Ahmad	Mr. R. Burn.
Sa'id Khan	Mr. A. W. Pim,
Hon'ble Rai Rajeshwar Bali.	Mr. B. J. K. Hallows.
Hon'ble Thakur Rajendra Singh.	Mr. E. L. Norton.
Hon'ble Nawab Muhammad Yusuf,	Mr. H. G. Billson.
Mr. G. B. Lambert.	Mr. B. J. S. Dodd.
Mr. E. A. H. Blunt.	Colonel A. W. B. Cochrane.
Kunwar Jagdish Prasad.	Mr. A. H. Mackenzie
Sir Ivo Elliott.	Mr. M. F. P. Herchenröder.
Mr. P. H. Tillard.	

The Council accordingly adjourned to the 24th July.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Saturday, July 21, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m.
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(57)

Hon'ble Sir Sam O'Donnell.	Thakur Rajkumar Singh.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.	Thakur Shiva Narayan Singh.
Hon'ble Rai Rajeshwar Bali.	Rai Bahadur Babu Ram Nath Bhargava.
Hon'ble Thakur Rajendra Singh.	Rai Bahadur Pandit Kharagjit Mista.
Hon'ble Nawab Muhammad Yusuf.	Babu Nemi Saran.
Mr. G. B. Lambert.	Chaudhri Badan Singh.
Mr. E. A. H. Blunt.	Itao Sahib Kunwar Sardar Singh.
Kunwar Jagdish Prasad.	Thakur Sa'ho Singh.
Sir Ivo Elliott.	Lieut. Raja Durga Narayan Singh.
Mr. P. H. Tillard.	Pandit Sri Krishna Dutt Paliwal.
Mr. H. A. Lane.	Babu Pars'dh Narayan Anad.
Mr. R. L. Yorke.	Pandit Yajna Narayan Upadhyaya.
Mr. R. Burn.	Rai Sahib Babu Dip Narayan Roy.
Mr. A. W. Pim.	Rai Bahadur Thakur Hanuman Singh
Mr. B. J. K. Hallowes.	2nd-Lieut. Sahibzada Bavi Pratap Narayan Singh, Rai Bahadur.
Mr. E. L. Norton.	Bhaya Hanumat Prasad Singh.
Mr. H. G. Billson.	Pandit Govind Ballabh Pant.
Mr. R. J. S. Dodd.	Mr. Mukandi Lal.
Colonel A. W. R. Cochrane.	Khan Bahadur Mr. Muhammad Aslam Saifi.
Mr. A. H. Mackenzie.	Maulvi Zahur-ud-din.
Mr. M. F. P. Herchenroeder.	Rao Sahib Abdul Hameed Khan.
The Revd. Canon A. W. Davies.	Khan Bahadur Chaudhri Amir Hasan Khan
Mr. H. C. Desanges.	Mr. Muhammad Ismail Ali Khan.
Mr. H. David.	Maulvi Muhammad Obaid-ur-Rahman Khan.
Babu Khem Chand.	Dr. Zia-ud-din Ahmad.
Babu Narayan Prasad Arora.	Khan Bahadur Hafiz Hidayat Hussain.
Babu Sangam Lal.	Khan Bahadur Saiyid Muhammad Ashiq Hussain.
Babu Mohan Lal Suksema.	Khan Bahadur Mr. Ashiq Hussain Mirza.
Babu Jai Narayan Chaudhri.	Khan Bahadur Munshi Siddiq Ahmad.
Babu Bhagwati Sahai Bedar.	Rai Bahadur Lala Mathura Prasad Mehrotra.
Thakur Manjit Singh Rathor.	Mr. E. M. Souter.
Rai Jagdish Prasad Sahib.	Mr. Tracey Gavin Jones.
Chaudhri Jaswant Singh.	Dr. Ganesh Prasad.
Pandit Nanat Chand.	

MEMBER SWORN.

The Revd. Canon A. W. Davies.

QUESTIONS AND ANSWERS.

STARRED QUESTIONS.

MIR. LABANTI'S ESTATE AND IMPROVEMENT TRUST, LUCKNOW.

***1. Khan Bahadur Mr. Muhammad Aslam Saifi :** Is it a fact that a house in Lucknow belonging to one Mr. Labanti was sought to be put up for auction by the decree-holder ?

Is it a fact that the Improvement Trust opposed the sale of the house on the ground that it had taken possession of the property owing to the nazul rent being in arrears ?

Hon'ble Rai Rajeshwar Bali : The answer to the first part of the question is in the affirmative. The Improvement Trust on behalf of the Secretary of State objected to the sale of the nazul land only.

***2. Khan Bahadur Mr. Muhammad Aslam Saifi :** Is it a fact that the subordinate judge of Lucknow in his judgement, dated September 7, 1925, held that the nazul officer was in collusion with the judgement-debtor in obtaining the order of forfeiture from the Chairman of the Improvement Trust ?

Hon'ble Rai Rajeshwar Bali : Yes.

***3. Khan Bahadur Mr. Muhammad Aslam Saifi :** Is it a fact that the subordinate judge remarked as follows :—

‘ I admit that the rent was in arrears. It was, however, in arrears as it was purposely not paid.

It was not paid, nor was it allowed to be paid by decree-holder in order to bring about forfeiture and to save property from sale. As the order of forfeiture was obtained by collusion, in my opinion it ought not to be allowed to stand. Fraud and collusion vitiate most solemn acts.”

Hon'ble Rai Rajeshwar Bali : Yes.

***4. Khan Bahadur Mr. Muhammad Aslam Saifi :** (a) Is it a fact that the subordinate judge disproved the statement of the nazul officer to the effect that he first got his information from an advertisement in the *Indian Daily Telegraph* ?

(b) If so, what action has been taken as regards this matter ?

Hon'ble Rai Rajeshwar Bali : (a) Yes.

(b) After reviewing the circumstances of the case the Government refused to appeal against the finding of the subordinate judge and drew the attention of the Trust to the need in its executive officer for scrupulous regard to equity and fairness in dealing with claims by the nazul.

***5. Khan Bahadur Mr. Muhammad Aslam Saifi :** What was the amount of arrears of the nazul land ?

Hon'ble Rai Rajeshwar Bali : Rupees 137-6-8.

***6. Khan Bahadur Mr. Muhammad Aslam Saifi :** What was the value of the building ?

Hon'ble Rai Rajeshwar Bali : Rupees 20,000 including the nazul land on which the building exists.

*7. **Khan Bahadur Mr. Muhammad Aslam Saifi** : What was the object of the re-entry on the property of the judgement-debtor ?

Hon'ble Rai Rajeshwar Bali : The Improvement Trust state that they wished to prevent the sale of nazul land and to let it out to better advantage.

Khan Bahadur Mr. Muhammad Aslam Saifi : Is the Hon'ble Minister aware that the Improvement Trust has taken no action in regard to this particular unscrupulous interference ?

Hon'ble Rai Rajeshwar Bali : I am not aware.

Khan Bahadur Mr. Muhammad Aslam Saifi : Is it the intention of the Government to inquire into this matter ?

Hon'ble Rai Rajeshwar Bali : Yes.

Pandit Nanak Chand : Who were the parties through whose collusion this was done as referred to in the judgement of the subordinate judge ? Was Mr. Botting, executive officer of the municipal board of Lucknow, a party to that ?

Hon'ble Rai Rajeshwar Bali : Mr. Botting is not an executive officer of the municipal board of Lucknow, but of the Improvement Trust.

Pandit Nanak Chand : Was he a party to the collusion ?

Hon'ble Rai Rajeshwar Bali : The honourable member can form his own opinion.

Pandit Nanak Chand : Was Mr. Botting censured by the Government for this ?

Hon'ble Rai Rajeshwar Bali : I have already said this in reply to question No. 4(b).

Pandit Nanak Chand : Has the Government nominated Mr. Botting to the municipal board after this censure ?

Hon'ble the President : That does not arise. Mr. Botting is not under examination here.

ELECTORAL ROLLS AND ELECTIONS OF BANDA MUNICIPALITY.

*8. **Thakur Har Prasad Singh** : Will the Government be pleased to supply the following information :—

- (a) who were the members in charge of framing the Muslim and non-Muslim electoral rolls respectively of Banda municipality ;
- (b) what is the Hindu population of Banda municipality ;
- (c) what is the Muhammadan population of Banda municipality ;
- (d) what is the number of Kayasthas in Banda municipality ;
- (e) how many non-Muslim and how many Muslim voters were enrolled by the members in charge of framing the electoral rolls ?

Hon'ble Nawab Muhammad Yusuf : (a) Maulvi Tajammul Karim Qidwai and Munshi Fida Ali Khan were in charge of framing the Muslim electoral rolls and Babu Bishambhar Nath and Babu Rama Shanker were in charge of the non-Muslim electoral rolls.

(b) Fourteen thousand and thirty-seven.

(c) Five thousand five hundred and fifty-two.

(d) The information is not available.

(e) Three hundred and one non-Muslims and one hundred and twenty-one Muslims.

*9. **Thakur Har Prasad Singh:** (a) How many claims were filed before the revising authority by the residents of Banda for their names being entered in the electoral rolls?

(b) How many objections were filed for the removal of the names of electors?

(c) Is it a fact that the revising authority fixed no particular date for the disposal of any particular claim or objection, but asked all the objectors and claimants to remain present from October 26 to 31?

(d) Is it a fact that the members who framed the electoral rolls of the municipality sought re-election in the municipality?

(e) Is it a fact that the members who prepared electoral rolls were allowed to oppose all the claims and objections before the revising authority and the district magistrate?

(f) Is it a fact that the revising authority sent for some records from the civil court at the instance of the said members?

(g) Is it a fact that the revising authority refused to act upon the certificate of the civil surgeon about age unless the civil surgeon appeared before him as a witness?

(h) Is it a fact that the claimants summoned the civil surgeon at a great cost and still his evidence was rejected?

(i) How many claims were allowed by the revising authority?

(j) Did the public of Banda send any telegram and deputation to the Commissioner complaining against the conduct of the revising authority? If so, what action was taken by him?

(k) Is it a fact that Pandit Gaya Prasad, who is now a junior Vice-Chairman of the municipality, was enfranchised on the application of his father to the effect that his son be entered as a voter in his place?

(l) Is it a fact that Lala Kalu Ram, an ex-member of the municipality, was not enfranchised though his father applied for the substitution of his son's name in his place?

(m) How many persons moved the district magistrate of Banda for the enrolment of their names in the electoral roll?

(n) Is it a fact that the district magistrate refused to take oral evidence as to the eligibility of the persons for being enrolled as voters?

(o) How many persons were enfranchised by the district magistrate?

Hon'ble Nawab Muhammad Yusuf: (a) Seven hundred and thirty-four.

(b) Seventy-four.

(c) Different dates were fixed for different classes of objections and were notified by beat of drum. The objections which were to be taken next day were also notified in the evening.

(d) Yes.

(e) Babu Bishambhar Nath, Babu Rama Shanker and Munshi Tajamul Karim appeared before the revising authority and were asked to give reasons for entry into or omission from the roll of any person

when considered necessary. Only Babu Rama Shanker attended the district magistrate's court for the same purpose.

(f) Yes.

(g) Yes.

(h) Yes.

(i) One hundred and eleven.

(j) Telegrams were sent. The Commissioner informed the district magistrate that he could not take any action on the representation and that it was open to any aggrieved person to act according to the rules.

(k) Yes.

(l) Yes.

(m) One hundred and forty.

(n) This is substantially true.

(o) Thirty-five.

*10. **Thakur Har Prasad Singh**: What was the percentage of Kayastha voters in the voters' list of Banda municipality?

Hon'ble Nawab Muhammad Yusuf: 32.93.

*11. **Thakur Har Prasad Singh**: Is it a fact that percentage of the population which was enfranchised in Banda municipality is the lowest in the whole province?

Hon'ble Nawab Muhammad Yusuf: The Government have no information.

*12. **Thakur Har Prasad Singh**: How many defaulters are entered as voters in the electoral rolls of the municipality?

Hon'ble Nawab Muhammad Yusuf: Seven non-Muslims and two Muslims.

*13. **Thakur Har Prasad Singh**: How many tax-payers who were not defaulters were excluded from the voters' list of the municipality of Banda?

Hon'ble Nawab Muhammad Yusuf: Twenty-eight non-Muslims and twenty-eight Muslims.

*14. **Thakur Har Prasad Singh**: (a) Who was the returning officer of non-Muslim elections of the municipality of Banda?

(b) How many voters were not allowed to vote by the returning officer and on what grounds?

(c) Is it a fact that municipal employees dictated their votes to the returning officer though they were literate? If so, why did they do so?

Hon'ble Nawab Muhammad Yusuf: (a) Babu Janki Nath Sahai, Deputy Collector, Banda.

(b) Eight. Out of these seven were not allowed to vote as the entry in the electoral roll did not tally with the parentage, etc., given by the voters at the time of ballot and one was disallowed as he was a minor.

(c) No.

*15. **Thakur Har Prasad Singh**: Is it a fact that the ballot papers used in the Banda municipal elections did not bear any official mark?

Hon'ble Nawab Muhammad Yusuf: The municipal seal which was used as an official mark on the first day was broken and so numbers on the ballot papers were regarded as an official mark for that day.

*16. **Khan Bahadur Saiyid Muhammad Ashiq Husain**: [*Cf. No. *12 of June 26, 1926.*]

*17. **Khan Bahadur Hafiz Hidayat Husain**: [*Cf. No. *41 of June 28, 1926.*]

INSPECTORS AND DEPUTY SUPERINTENDENTS OF POLICE.

*18. **Rai Bahadur Babu Vikramajit Singh**: What is the percentage of Hindu, Muslim and Christian deputy superintendents of police promoted from the rank of inspectors at the present moment?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: The total percentages for deputy superintendents of police, permanent and temporary, promoted from the rank of inspector at the present time are:—

Christians	...	...	...	...	30
Muslims	...	...	...	...	40
Hindus	...	...	...	...	30

*19. **Rai Bahadur Babu Vikramajit Singh**: What was the percentage in June, 1925 and June, 1920?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan:

June, 1925 :—

Christians	...	...	...	...	35.5
Muslims	...	...	...	...	35.5
Hindus	...	...	...	...	29

June, 1920 :—

Christians	...	...	...	...	34.75
Muslims	...	...	...	...	30.5
Hindus	...	...	...	...	34.75

*20. **Rai Bahadur Babu Vikramajit Singh**: How many inspectors have been promoted to the rank of deputy superintendents of police since June, 1925?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: Fifteen promotions have been made, all temporary.

*21. **Rai Bahadur Babu Vikramajit Singh**: How many out of them are Hindus, how many Muslims, and how many are Christians?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan:—

Christians	...	...	...	...	5
Muslims	...	...	...	...	6
Hindus	...	...	...	...	4

*22. **Rai Bahadur Babu Vikramajit Singh**: What is the number of kotwals acting as honorary deputy superintendents of police in charge of cities?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: Two.

*23. **Rai Bahadur Babu Vikramajit Singh** : How many out of them are Hindus and how many Muslims ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Both are Muslims.

*24. **Rai Bahadur Babu Vikramajit Singh** : What is the length of service of the kotwal of Benares and how long has he been there ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : His length of service is 35 years and four months and he has been kotwal of Benares for eleven years and three months.

*25. **Rai Bahadur Babu Vikramajit Singh** : Is it a fact that he has completed 35 years' service ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes.

*26. **Rai Bahadur Babu Vikramajit Singh** : How long had there been no Hindu kotwal in Benares, Cawnpore, Agra, Allahabad and Bareilly ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan :

Benares	...	...	...	...	28 years.
Cawnpore	...	...	...	...	18 "
Agra	...	...	...	...	12 "
Allahabad	...	...	...	...	9 "
Bareilly	...	...	...	...	18 "

*27. **Rai Bahadur Babu Vikramajit Singh** : Are there no inspectors amongst the Hindu officers in the selection grade and second grade fit to hold charge of the cities in question ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The fitness of officers for particular posts depends on their personal records. These are confidential and Government are unable to give any information derived from them.

*28. **Rai Bahadur Babu Vikramajit Singh** : If the answer to the foregoing question is in the negative, why have they been promoted to these grades ; and if the answer is in the affirmative, why have they not been tried as kotwals ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Fitness for the post of kotwal is not an essential qualification for the selection grade or the second grade. Not all officers who are fit for a post are necessarily tried in it. The officer considered most fit is selected.

*29. **Rai Bahadur Babu Vikramajit Singh** : Is the Government prepared to try some of them as kotwals in the near future ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Government can give no undertaking which would fetter the discretion of the Inspector-General of Police in filling future vacancies as they occur.

*30. **Rai Bahadur Babu Vikramajit Singh** : Is there any Government order that kotwals at Benares and Lucknow will always be Muslim and Hindu respectively ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : No.

***31. Rai Bahadur Babu Vikramajit Singh :** Is it a fact that the following officers have been superseded in giving promotion to Munshi Shafiq-ul-Hasan, Munshi Safadar Husain and Munshi Imtiaz Ahmad :—

- (1) Sardar Santokh Singh, Circle Inspector, selection grade;
- (2) Pandit Tara Chand, Circle Inspector, selection grade;
- (3) Babu Hari Singh, Circle Inspector, selection grade;
- (4) Babu Ganesh Dat, Circle Inspector, selection grade;
- (5) Thakur Prem Singh, Circle Inspector, selection grade;
- (6) Babu Man Mohan Lal, Circle Inspector, second grade;
- (7) Babu Jagdish Shanker, Circle Inspector, second grade?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Munshi Shafiq-ul-Hasan has superseded six, Munshi Safdar Husain four and Munshi Imtiaz Muhammad Khan three of the officers mentioned. Chaudhri Prem Singh has been left out of account as he has himself been promoted.

***32. Rai Bahadur Babu Vikramajit Singh :** What were the annual entries in the character rolls of the above officers under the headings of "General good work," "Particulars of good service" and "Particulars of misconduct" within the last ten years as well as similar entries in the character rolls of the three above named Muslim officers promoted to the rank of deputy superintendents of police?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The character rolls of police officers are confidential records and Government are unable to quote from them.

***33. Rai Bahadur Babu Vikramajit Singh :** Was there any special reason to supersede these officers? If so, please state the reasons?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Government are unable to discuss reasons for making promotions by selection.

***34. Rai Bahadur Babu Vikramajit Singh :** Is selection to the rank made by seniority and good work, or is it merely in the gift of the Government?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The honourable member is referred to the answer to question No. 33.

***35. Rai Bahadur Babu Vikramajit Singh :** Can the officers who have been superseded appeal to the Government against their supersession? Has any representation been made?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The answer to both questions is in the negative.

***36. Rai Bahadur Babu Vikramajit Singh :** Is it known to the Government that there is a general discontent among the Hindu officers on account of these supersessions?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : No.

***37. Rai Bahadur Babu Vikramajit Singh :** Is the Government prepared to post Hindu and Muslim kotwals according to the ratio in population of Hindus and Muslims in the provinces?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : No.

***38. Rai Bahadur Babu Vikramajit Singh :** Is the Government prepared to post Hindu kotwals in those cities where there had been

Muslim kotwals for the last seven years and Muslim kotwals in the cities where there had been Hindu kotwals for the last seven years?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The honourable member is referred to the answer to question No. 29.

SUB-INSPECTORS OF POLICE.

*39. **Rai Bahadur Babu Vikramajit Singh :** What is the percentage of Muslim, Hindu and Christian sub-inspectors in the province? How many of the Hindus have passed S. L. C. or a higher examination, and how many of the Muhammadan sub-inspectors have passed S. L. C. or a higher examination, and the same with regard to Christians?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The percentage of Muslim, Hindu and Christian sub-inspectors in the province is 45·14, 54·5 and 0·36 respectively. Forty-five per cent. of the Muslim, 66 per cent. of the Hindu and 43 per cent. of the Christian sub-inspectors have passed the School Leaving Certificate or a higher examination.

*40. **Rai Bahadur Babu Vikramajit Singh :** What is the minimum qualification required for recruitment to sub-inspectorship in the police?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The minimum qualifications of various kinds for direct appointment are numerous and the honourable member will find them in paragraph 3 of the Rules for Provincial Police Training School, 1925, part II, which can be obtained from the Government Press on payment. A copy can be shown to the honourable member.

*41. **Rai Bahadur Babu Vikramajit Singh :** Will the Government be pleased to state how many sub-inspectors were appointed from direct recruitment during the last five years? How many Hindus, how many Muslims, and how many Hindus were possessed of the minimum educational qualifications and how many did not possess it? How many Muhammadans were possessed of the minimum educational qualifications and how many were not possessed of it?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Four hundred and twelve sub-inspectors were appointed by direct recruitment during the last five years, of whom 251 were Hindus and 161 Muslims. Of the 251 Hindus 216 were possessed of the minimum educational qualification and 35 were not. Of the 161 Muslims 135 were possessed of the minimum educational qualification and 26 were not.

*42. **Rai Bahadur Babu Vikramajit Singh :** Will the Government give preference to graduates and under-graduates over S. L. C.'s or S. L. C. failed candidates in making appointments for sub-inspectorship?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Other things being equal, yes.

*43. **Rai Bahadur Babu Vikramajit Singh :** If the answer to the foregoing question be in the affirmative, will the Government be pleased to issue instructions to all officers in the district who make nominations? If in the negative, state the reasons please?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : This has been done for graduates and will be done for candidates who have passed the Intermediate examination.

*44. **Khan Bahadur Hafiz Hidayat Husain** : [*Withdrawn by the honourable member.*]

RURAL GAMES AND PHYSICAL CULTURE IN URBAN AREAS.

*45. **Khan Bahadur Hafiz Hidayat Husain** : Will the Government be pleased to state what they have so far done to foster rural games in the province ?

*46. Will the Government be pleased to state if they have made any allotment so far from the Rs. 25,000 sanctioned in the budget and supplementary estimates for the promotion of the physical culture in urban areas ? Who are the recipients and what is the amount awarded to them ?

Hon'ble Rai Rajeshwar Bali : An answer will be given later.

REMUNERATION OF AUDITORS UNDER THE MUSALMAN WAQF ACT.

*47. **Khan Bahadur Hafiz Hidayat Husain** : Are Government aware that the district judges are following no uniform practice either in the appointment of auditors or their remuneration for checking the accounts of the *mutawallis* under the Musalman Waqf Act, XLII of 1923 ? Will the Government be pleased to prescribe a fixed scale of fee for the auditors and lay down rules to guide the district judges in appointing auditors ?

Hon'ble Rai Rajeshwar Bali : The Government have no power to prescribe the scale of fees. The Government do not understand what rules can usefully be made, for practice cannot be uniform. Individual cases differ and must be determined by the district judges under the discretion which the law allows them.

Khan Bahadur Hafiz Hidayat Husain : Is the Government aware that as a matter of fact there is no fixed scale ?

Hon'ble Rai Rajeshwar Bali : That may be so.

Khan Bahadur Hafiz Hidayat Husain : Does the law allow, it ?

Hon'ble Rai Rajeshwar Bali : Yes.

**KHAN SAHIB MAULVI MUHAMMAD ISMAIL, HONORARY
MAGISTRATE, HAMIRPUR.**

*48. **Khan Bahadur Hafiz Hidayat Husain** : How long has Khan Sahib Maulvi Muhammad Ismail been serving as Honorary Magistrate in the Hamirpur district ? What class of magisterial powers did he exercise ? What are his educational qualifications ?

Is it intended to withdraw these powers from him now, and, if so, why ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Nearly eight years. He exercised third class powers from July 2, 1918 to May 30, 1921, and second class powers from May 31, 1921 to May 30, 1926. He has passed the Middle Anglo-Vernacular examination and the Pleadership examination.

His term of office expired on May 31, 1926, and has not been extended as he is over 60 years of age, and owing to a recent severe attack of appendicitis from which he has only partially recovered he is

no longer fit for active work as a magistrate. He is being made an honorary magistrate for life on the retired list.

BENCH OF HONORARY MAGISTRATES AT HAMIRPUR.

***49. Khan Bahadur Hafiz Hidayat Husain :** Is it intended to establish a bench of honorary magistrates at Hamirpur? If so, what are the names of the gentlemen selected to constitute the bench? What are their qualifications and what are the ages of these gentlemen? Why has it been thought necessary to establish a bench at Hamirpur?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes, a bench is needed to do the ordinary magisterial work of the municipality. The proposed members of the bench are :—

- (1) Munshi Muhammad Shaukat Ullah Khan, aged 50 years. He is a considerable zamindar who has read up to F. A. class.
- (2) Babu Madhganjan Sahai, aged 56 years. He has lately retired from the post of office superintendent and is a man of good position and local influence.
- (3) Lala Ram Nath Vaish, aged 50 years. He knows Hindi well, runs a library and is considered to be a scholar.

AUDITORS UNDER THE MUSALMAN WAQF ACT.

***50. Dr. Shafa'at Ahmad Khan :** Will the Government be pleased to lay on the table a statement showing (a) the names, (b) number, (c) address, (d) qualifications, and (e) emolument of auditors who have been appointed to audit the accounts of incomes of (1) all *wagfs* under Rs. 2,000 a year, and (2) of *wagfs* above Rs. 2,000 a year, in accordance with the Musalman Waqf Act of 1923 in each district of these provinces?

Hon'ble Rai Rajeshwar Bali : No. The honourable member should apply to the courts concerned.

***51. Dr. Shafa'at Ahmad Khan :** Will the Government be pleased to state in how many districts—

- (1) such auditors have been appointed ;
- (2) separate auditors have been appointed for Sunni and Shia *wagfs* ;
- (3) more than one auditor has been appointed for auditing accounts of incomes under Rs. 2,000 a year ?

Hon'ble Rai Rajeshwar Bali : An answer will be given later.

***52. Dr. Shafa'at Ahmad Khan :** Has the attention of the Government been drawn to the fact that the fees charged by auditors vary considerably in various districts ?

Hon'ble Rai Rajeshwar Bali : No.

***53. Dr. Shafa'at Ahmad Khan :** Is it a fact that in some districts auditors are allowed to charge as much as 5 to 7 per cent. on the annual income of all *wagfs* audited by them, while in others only 2 per cent. is charged ?

Hon'ble Rai Rajeshwar Bali : Inquiry has been made and the information is not yet available.

MUSLIM BOYS IN BOARD'S MIXED SCHOOLS.

7. **Khan Bahadur Hafiz Hidayat Husain** : What was the number of Muslim boys in all board's mixed schools on May 1, 1926? What was the total enrolment on that date?

Kunwar Jagdish Prasad : A reply will be given at a later date as the information is not yet complete.

PASSED STUDENTS OF GOVERNMENT NORMAL SCHOOL, LUCKNOW.

8. **Khan Bahadur Hafiz Hidayat Husain** : How many students passed out of the Government Normal School, Lucknow, last time? How many out of these were Muslims and how many Hindus? How many out of these have been provided?

Kunwar Jagdish Prasad : Twenty-four; 21 Hindus and three Muhammadans; all.

VILLAGE PANCHAYATS IN CAWNPORE, ETAWAH AND FATEHPUR.

9. **Khan Bahadur Hafiz Hidayat Husain** : How many village *panchayats* have been created in each year during the last three years in the districts of Cawnpore, Etawah and Fatehpur?

(b) Has communal representation been kept in view in making appointments of *panches*?

Sir Ivo Elliott : Inquiry has been made and the information is not yet available.

AUDITORS AND ACCOUNTS UNDER WAQF ACT.

10. **Khan Bahadur Mr. Muhammad Aslam Saifi** : Is the Government aware that court-fees are charged on all accounts and statements required to be submitted by *mutawallis* of *wagfs*?

11. Is the Government aware that this entails a great hardship on the small endowments?

Sir Ivo Elliott : Inquiry has been made and the information is not yet available.

12. **Khan Bahadur Mr. Muhammad Aslam Saifi** : Is the Government aware that many civil court judges have appointed Hindu gentlemen as auditors for *wagfs* the income of which is below Rs. 2,000 and have fixed 5 per cent. of the *wagf's* revenue as their remuneration?

Sir Ivo Elliott : No. The Act leaves these appointments to the discretion of the court.

13. **Khan Bahadur Mr. Muhammad Aslam Saifi** : Is the Government aware that there are many Muhammadan gentlemen available who are fully qualified to do the auditing?

Sir Ivo Elliott : No.

14. **Khan Bahadur Mr. Muhammad Aslam Saifi** : Will the Government issue instructions to preferably appoint Muhammadan auditors who are likely to forego their audit fees in favour of *wagfs*?

Sir Ivo Elliott : No. The appointments must be left to the discretion of courts, who will doubtless appoint the most suitable person available.

TOWN HALL, ORAI.

15. **Khan Bahadur Hafiz Hidayat Husain** : Is it in contemplation to build a Town Hall at Orai in the Jalaun district ? What is the estimated cost of the building ? Who is collecting subscriptions ? What part, if any, do the revenue officers of the district take in the collection of subscriptions ? How much money has been realized and what is the amount subscribed in 1926 ?

Sir Ivo Elliott : Inquiry has been made and the information is not yet available.

PANCHAYATS IN JALAUN.

16. **Khan Bahadur Hafiz Hidayat Husain** : How many *panchayats* and how many *panches* are there all together in the Jalaun district, and how many out of these latter are Muslims and what are their names ?

Sir Ivo Elliott : There are 100 *panchayats* and 602 *panches* of whom thirteen are Muslims.

INSPECTION OF INSTITUTIONS BY MEMBERS OF THE LEGISLATIVE COUNCIL.

17. **Khan Bahadur Hafiz Hidayat Husain** : Are Members of the Legislative Council allowed to inspect cattle-pounds and their registers within their constituencies ? Have the Government issued any orders authorizing Members of the Legislative Council to inspect institutions attached to local bodies ? If so, will the Government be pleased to place a copy on the table ?

Sir Ivo Elliott : The honourable members can visit cattle-pounds provided that they obtain the previous consent of the local body by whom they are managed. The answer to the second part of the question is in the negative and the third part of the question does not arise.

PROSECUTIONS UNDER SECTION 110 OF CRIMINAL PROCEDURE CODE IN AZAMGARH.

18. **Khan Bahadur Hafiz Hidayat Husain** : Is it a fact that prosecutions under section 110 of the Code of Criminal Procedure are largely on the increase in the Azamgarh district ? If so, what is the reason ?

Mr. G. B. Lambert : No. The figures of prosecutions naturally fluctuate from year to year, but there has been no decided increase. The object of these prosecutions is to reduce crime.

THE UNITED PROVINCES MUNICIPALITIES (AMENDMENT) ACT.

Hon'ble the President : I have to announce that the United Provinces Municipalities (Amendment) Act, II of 1926, which was passed by the United Provinces Legislative Council on April 6, 1926, and assented to by His Excellency the Governor on May 12, 1926, received the assent of His Excellency the Governor-General on July 1, 1926.

THE AGRA TENANCY BILL.

CLAUSE 109.

Improvements by permanent tenure-holder or fixed-rate tenant.

A permanent tenure-holder or a fixed-rate tenant may make any improvement.

Mr. Mukandi Lal : I beg to move that the following words be inserted between "fixed-rate" and "tenant" :—
"or ex-proprietary or occupancy."

My intention in moving this amendment is to enable the ex-proprietary and occupancy tenants to make improvements on their holdings like the permanent tenure-holders or the fixed-rate tenants. The primary object of the Bill is stated to be to promote the agricultural development of the province and to enhance the prosperity of the zamindars and the tenants. That being so, I see no reason why the ex-proprietary and occupancy tenants should not be allowed to make improvements on their holdings.

Hon'ble Sir Sam O'Donnell : I must oppose this amendment. The occupancy tenant does not stand on the same footing as the permanent tenure-holder and the fixed-rate tenant. The latter are practically sub-proprietors and cannot be ejected. If their holdings are sold up, they have no claim for compensation for any improvements made thereon. The occupancy tenant is not a sub-proprietor. He is a tenant and is allowed to make only such improvements on his holding as do not alter its permanent character. It would, therefore, be unreasonable to place him on the same footing as the permanent tenure-holder or the fixed-rate tenant, who are practically proprietors and consequently enjoy all the rights of proprietors.

Mr. Mukandi Lal : From what has fallen from the Hon'ble the Finance Member, it appears that the Government are very keen on differentiating among the various classes of tenants. I beg to reiterate that if our aim is really to improve agriculture, I see absolutely no reason why the ex-proprietary and occupancy tenants should be precluded from making any improvements on their land. For these reasons I press the amendment.

Hon'ble Sir Sam O'Donnell : It is not proposed that the ex-proprietary and occupancy tenants should be precluded from making any improvements on their holdings. That is not at all the intention of the Bill. If honourable members will refer to clause 110, they will see that "an ex-proprietary or occupancy tenant may make any improvement except that he may not plant trees, make a tank, or erect buildings of a permanent character unless there is a local custom entitling him to do so or he has obtained the written consent of his landholder." The reason for requiring the consent of the landholder or the existence of a local custom before he can plant trees or erect buildings of a permanent character is that improvements of that kind alter the character of the holding. The tenant takes the land for the purpose of agriculture. If he desires to plant trees or otherwise alter the character of his holding subsequently, then it is only reasonable that he should obtain the consent of the landholder. The position of the permanent tenure-holders and

fixed-rate tenants is quite different. They are practically sub-proprietors and are in the same position as proprietors themselves.

Question that the words "or ex-proprietary or occupancy" be inserted put and negatived.

Question that clause 109 stand part of the Bill put and agreed to.

CLAUSE 110.

An ex-proprietary or occupancy tenant may make any improvement except that he may not plant trees, *make a tank*, or erect buildings of a permanent character unless there is a local custom entitling him to do so or he has obtained the written consent of his landholder.

Mr. Mukandi Lal: I beg to move that in clause 110 the following words "plant trees, make a tank, or" in line 3 be deleted. The result of the deletion of these words would be that the ex-proprietary or occupancy tenants can make tanks and plant trees. They would of course be precluded from erecting buildings of a permanent character. I think they should be allowed to plant trees and make tanks which are really essential for the improvement of agriculture.

Hon'ble Sir Sam O'Donnell: I have already dealt with this proposal. The reason for requiring the consent of the landholder to the planting of trees or to the making of tanks is simply that these improvements alter the character of the holding. If trees are planted over a holding, it ceases to be agricultural land and it becomes a grove. Similarly, if a tank is made on the land, crops cannot be grown on that land. It is surely unreasonable that without the consent of the landholder a tenant should be entitled to alter the character of his holding.

Mr. Mukandi Lal: I am not at all convinced by the arguments advanced by the Hon'ble the Finance Member. If a tank is made it does not mean that it will cover the whole holding: it will be made for the purpose of irrigating the fields. Therefore the argument that the making of a tank will entirely change the character of the soil falls to the ground. In these circumstances I think that the words "trees, make a tank or" should be deleted.

Hon'ble Sir Sam O'Donnell: If a tank is really required for the purpose of irrigating the remainder of the holding, I do not think that any reasonable landlord would refuse such permission. But his consent ought to be obtained before the character of any portion of the holding is changed.

Question that the words "trees, make a tank, or" stand part of the Bill put and agreed to.

Maulvi Muhammad Obaid-ur-Rahman Khan: I beg to move that in line 4 the words "any kind" after "buildings" be inserted and the words "of a permanent character" be deleted. My object in moving this amendment is that to allow the tenant to construct any building without the permission of his landlord is too much: it will cause a good deal of litigation, because the tenant will always try to prove that the building which he has erected is not of a permanent character, while the landlord will try to prove otherwise. When there is the condition that the erection of buildings should be subject to the local custom, I

[Maulvi Muhammad Obaid-ur-Rahman Khan.]

think it should apply to any kind of building. I therefore hope that the House will accept this amendment of mine.

Hon'ble Sir Sam O'Donnell: I hope that my honourable friend will realize that this is not a reasonable proposal. At present an occupancy or ex-proprietary tenant—I am referring to Act II of 1901—can make any improvement except the planting of trees. We propose in this Bill to restrict his rights. He will not in future be permitted to make a tank or to erect a building of a permanent character. Our reason for doing that is, as I have already explained, that buildings of a permanent character alter the character of the holding. It is surely unreasonable, however, that he should be precluded from making a building of a temporary character, for example, a cattle shed or a hut in which he sleeps at night and watches his crop. In the *khadir* tracts the tenants put up chappars and practically live in them. I cannot see how litigation is likely to occur over the question whether the building is of a permanent or of a temporary character. In practice temporary buildings will be cattle-sheds, huts or the like. No court will hold that these buildings are of a permanent character. This amendment would impose restrictions on the whole body of occupancy tenants. It would take away a right which is very necessary for them and which they have enjoyed always.

Dr. Zia-ud-din Ahmad: I beg to support the amendment of my friend Khan Sahib Maulvi Muhammad Obaid-ur-Rahman Khan, because it is difficult to decide whether a building is of permanent character or of non-permanent character. I do not consider any building to be permanent because they can be easily removed. On the contrary, the example given by the Hon'ble the Finance Member about the thatched roof which is supported by means of bamboos or wood cannot be called a building. It is only a chappar and not a building. I therefore think that whenever the word building is used the words "of a permanent nature" are unnecessary and should be deleted.

Khan Bahadur Hafiz Hidayat Husain: There is only one point which I beg to bring to the notice of the House. Under the Easements Act it has been held by our High Court that even a thatched building partakes of the nature of a permanent building. Therefore if a thatched building is of that character, an ex-proprietary or occupancy tenant will be precluded from erecting it.

Maulvi Muhammad Obaid-ur-Rahman Khan: I never intended to deprive the occupancy tenant of any right. What I thought was that litigation will be increased. So far as section 88 of the present Act goes, I think that generally no occupancy tenant is permitted to make a building in his holding, and to make a building certainly does not come under making an improvement in one's fields. It does not improve the value of the field. I therefore beg that these words be deleted, otherwise litigation will be increased and the relations between the landlord and the tenant will not remain as good as is desired by the legislature.

Hon'ble Sir Sam O'Donnell: Whether or not a building is of a permanent character or what exactly constitutes a building is a question of fact, and I have not the least doubt that the revenue court before whom this question will go will interpret these words in a common sense.

way. They will rule out what in ordinary parlance would be described as a permanent building, and they will not exclude cattle-sheds and chappars which are necessary for the use and occupation of the land.

Question put that the words "of a permanent character" stand part of the clause.

The House divided: Ayes, 40; Noes, 13.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'ib Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Halliowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenroder.
Mr. H. O. Desanges.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksena.
Babu Bhagwati Sahai Bedar.
Pandit Nanak Chand.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Pandit Kharagjit Misra.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyay.
Rai Bahadur Thakur Hanuman Singh.
Mr. Mukandi Lal.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Noes.

Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Rai Sahib Babu Dip Narayan Roy.
Bhaiya Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.

Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Munshi Siddiq Ahmad.
Rai Bahadur Lala Mathura Prasad Mehrotra.

Pandit Nanak Chand: I move that the following proviso be added to clause 110 :—

"Provided that a tenant with a right of occupancy shall not plant trees in more than 10 per cent. of the area of such holding, nor in an area exceeding one bigha in the aggregate without the permission of his landlord, and trees so planted shall not constitute a grove."

It has been laid down in the definition of "improvement" in clause 3, sub-clause (11), that planting of trees is an improvement. I propose by this amendment that occupancy tenants and also the ex-proprietary tenants, who but for the unfortunate fact that their land has been sold to somebody else were themselves landlords who cultivated their own land, should be granted the privilege of planting some trees on their holding, subject to two restrictions, first of all, that the area should not be more than 10 per cent. of their holding, and secondly, that this area should in no case exceed one bigha in all, so the percentage will go on diminishing as holdings exceed the area of 10 bighas. I have also sought to provide in this amendment that the trees when so planted should not be treated as grove. It might be said that the planting of trees will change the nature of land as defined in this Bill,

[Pandit Nanak Chand.]

and the tenant will not be liable for ejectment from the land planted with trees, but I have provided a safeguard that the planting of trees will not be treated as grove. This will enable the landlord to eject the tenant in spite of the presence of the trees on the holding, if he has to be ejected for some good reason, as non-payment of rent. As regards the cost of the improvement, the court will be in a position to determine what amount of compensation is fair and reasonable in the case of ejectment of a tenant who has planted trees. I think the form in which I have moved the amendment is such that there will not be any objection to accept the same.

Babu Nemi Saran : I beg to move an amendment to the amendment moved by my honourable friend Pandit Nanak Chand. For the proviso moved by Pandit Nanak Chand I wish that the following be substituted:—"Provided that a tenant with a right of occupancy may plant timber trees in not more than 2 per cent. of the area of his holding subject to a maximum of one acre. Trees planted under this section shall not constitute a grove, but for all purposes of this Act they would be treated as crops."

The first thing in this connexion which I want to point out is that the tenant, we all know, stands in great need of timber for the purpose of agricultural operations. We also know that in these provinces a greater part of the manure, i.e., the cow dung, is being utilized by the tenants for purposes of fuel, and it is being burnt instead of being used as manure. It is also apparent that on account of the want of the manure, the lands are degenerating in their produce.

Hon'ble the President : I think the honourable member had better confine himself to the merits of the amendment.

Babu Nemi Saran : I want to impress upon this honourable House how much it is necessary for a tenant to stock the cow dung as manure and not to use it as fuel. Therefore, it is very necessary that a tenant must have some source by which he can get wool as his fuel. That is his first necessity. The second necessity for a tenant is that he should have some timber for the purposes of construction of his ploughs and other agricultural implements. We all know that the tenants are in such a position that up to this time they used to get all these things from the zamindar either by means of begging or some other illegal way, i.e., by giving *begar* and other things which the zamindar is legally not entitled to collect. Now when this Act is passed, then the tenant with a right of statutory tenancy would be in a position which the zamindar would very much dislike, and many of the zamindars, perhaps, would like to crush the man as far as they can, either to eject him or have his rent enhanced. In the circumstances, he would not be in a position to get his wood or timber in the usual way as he used to up till now, and it is very necessary that he should be provided with certain privileges under this Act so that he may be able to plant certain trees to a limited extent in order to provide timber. As my amendment goes, it provides three things. The first is that in not more than 2 per cent. of his area he would be entitled to plant trees and not exceeding a maximum of one acre; and the second thing is—I think it was a great hitch in the way of the zamindars to planting trees that the land in which the trees were planted constitute a grove as

soon as the trees were planted therein—that the trees planted under this proviso shall not constitute a grove, and therefore these trees would not be entitled to be taken into consideration at the time when the tenant is ejected for failing to pay compensation to the zamindar; and secondly, it provides that for all purposes under this Act it should be treated as crop. That is to say, if there is any arrears of rent outstanding against the tenant, the zamindar would be entitled to put his finger on those trees in order to realize that rent.

I hope that the zamindars, seeing the necessity and equity of the thing, would try to give at least this legitimate demand of the tenant, which he needs so much.

Rao Sahib Abdul Hameed Khan :

جناب والا - یہ کچھ پُرانی دتیانوسی داستان نہیں ہی بلکہ ابھی تک یقیناً ہم سب کے حافظہ میں اُس کی یاد بخوبی تازہ ہے کہ جب ہماری گورنمنٹ کو یہ مبارک خیال پیدا ہوا کہ پچھلے رائیج الوقت قانون اراضی کو داخل دفتر یا منسوخ و کالعدم کیا جائے اور اس کے بجائے ایک نیا قانون اراضی جاری و نافذ ہو تو گورنمنٹ نے اور کاشتکاروں کے نام نہاد دوستوں نے مشترکہ سعی سے اِس ملک میں یہ نفاذ پیدا کر دی کہ ہر کس و ناکس کو یہ یقین ہو گیا کہ اِس صوبہ کے کاشتکار مفاسد ننانچ فائدہ کش نادار اور مظلوم و بیگس و لاچار ہیں *

Hon'ble the President :

اِس ترمیم پر بحث کیجئے ابھی اتنا زیادہ وقت نہیں ہے - آگے آپ کے پاس بہت وقت ہے *

Rao Sahib Abdul Hameed Khan :

حضور والا - میں کچھ ہی سیکنڈ کے بعد اِسی بحث پر آرہا ہوں شہادت آمیز پروپیگنڈے کا یہ اثر ہوا کہ ہر سوسائٹی اور ہر طبقہ اور خیال کے لوگ اپنی پوری قوت کے ساتھ زمیندار کی تباہی و ہربادی کے لیئے متعلق ہم راے اور ہم آہنگ ہو گئے لیکن اِس قانون پر دفعہ ۱۰۸ تک بحث ہو چکنے کے بعد یہ پُر لطف مذاق اور مستحضرانہ قابل داد ہے کہ آج ہم سب کے دیکھتے دیکھتے اچانک کاشتکار کی حالت نے پلٹا کھایا اور اب کاشتکار کی پہلی بدنصیب حالت اور موجودہ صورت میں زمین آسمان کا فرق ہو گیا - بقول شاعر -

دور صد چرخ تھا ساغر کا ایک دور • نکلا جو میں میکدہ سے تو مینا بدل گئی
قانون کیا طلسم ہوش ربا کا جانو یا الدین کا چراغ ہے - اب کاشتکار کی
ماشاء اللہ خدا نظر بد سے بچائے یہ حالت ہو گئی ہے کہ اُس کو ہر ایک چیز کی
ضرورت ہے جو کسی بادشاہ یا متمول و با ثروت شخص کے پاس پائی جاسکتی
ہی •

جناب والا - اب اراکین گورنمنٹ اور سراجی دوست بالاتفاق یہ فرماتے ہیں

[Rao Sahib Abdul Hameed Khan.]

عرب کا قصہ تو خدا جانے صحیح ہی یا غلط لیکن یہہ اظہر من الشمس ہی کہ کاشتکار کی یہہ روز افزوں ضروریات زمیندار کے لیئے پیغام قضا ثابت ہو کر رہیگی بہہ حال ہمیں اس مسرہ کے مصنفین کو اس معجزہ پر مبارکباد دینا چاہیئے حقیقت یہہ ہی کہ اس قانون کی تعریف و توصیف میں بہت کچہہ کہا جاسکتا ہی جو ایک اشتہاری دوا فروش اپنے خضاب کے لیئے لکھہ سکتا ہی *

اس کے بعد میں یہہ عرض کرنا چاہتا ہوں کہ میوے ایک آپریل دوست نے ابھی یہہ فرمایا ہی کہ ابھی تک کاشتکاران کو لکڑیاں وغیرہ زمینداران سے قیماً یا مفت مل جانی تھیں لیکن آئندہ ان کو اس کی ضرورت ہوگی کہ وہ اپنے لیئے لکڑی خون پیدا کریں۔ ابھی تک اس قانون کے نفاذ سے پہلے کاشتکار کو بہت سی ایسی چیزوں کی ضرورت ہوا کرتی تھی جو ان کے گھر اور کیت میں پیدا نہیں ہوتی

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جناب والا - میں اس عجیب و غریب کوشش کو سمجھنے سے قاصر ہوں کہ اس قانون کے ذریعہ سے یہہ چاہا جا رہا ہی کہ اس کی تمام ضروریات اس زمین سے پوری کی جائیں جو اس نے کاشت کے لیئے لی ہی وہ زمین مکان کے لیئے بھی استعمال ہو اسی زمین سے وہ پھل اور میوہ جت بھی کھائے اور اسی زمین سے لکڑی بھی مل جائے۔ اس قانون کا منشاء تو صرف یہہ بتلایا گیا تھا کہ غریب کاشتکار کے لیئے ترقی مدت کاشت کا اہتمام لیکن اب اس قانون سے قطعی نئے نئے مقاصد کی تکمیل کی جا رہی ہی *

جناب والا - عمارت کے ساتھ ”عارضی“ کا لفظ شاید اس لیئے رکھا گیا ہی کہ ہمارے صوبہ میں اور دنیا کے مختلف ممالک کی طرح بے روزگاری اور بیکاری کا سوال روز بروز بد سے بدتر ہو رہا ہی اب اس کے بعد ہمارے تعلیم یافتہ نوجوان بحیثیت وکیل کے اپنی روزی کما سکیں گے کسی عمارت کا عارضی اور مستقل ہونا کم از کم اس ملک کے رواج اور دستور کے مطابق طے ہونا خالی از دشواری نہیں ہی - میں بلا خوف تردید یہہ کہنے کی جرات کرتا ہوں اس قانون کا ایک ایک لفظ مقدمہ بازی میں اضافہ کا باعث ہوگا اور اسی میں دونوں ترمیمات کو لغو اور مضرت رساں سمجھتے ہوئے نہ صرف پُر زور اختلاف کرتا ہوں بلکہ گورنمنٹ اور سوراجی دوستوں کے اسی شہادت آمیز طریق کار پر صراحت احتجاج بلند کرتا ہوں *

Hon'ble Sir Sam O'Donnell: I must point out in the first place that the proviso practically contradicts the clause itself. The clause itself says that the ex-proprietary and occupancy tenant cannot plant any trees unless there is a local custom or he has the consent of the landlord; the proviso then goes on to say that he may plant trees up to a certain limit, i.e., 10 per cent. or a bigha. Apart from that and on the merits, this proposal seems to be open to strong objections. The

occupancy tenant has never had the right to plant trees except when there is a custom authorizing him to do so or he has the consent of the landlord. The reason is that trees alter the character of a holding. If trees are planted, it cannot be used for growing agricultural crops. It has been said that the tenants may require timber for building purposes or fuel. If he requires timber for building his house, it would be cheaper in the long run for him to buy it. And as to fuel, if the occupancy tenants, as a class, are going to grow trees which will provide them with a regular supply of fuel, I am afraid that the result will be that a large part of their holding will be converted into forests. Another objection is that this amendment will give rise to endless disputes as to whether the area planted was exactly ten per cent. or a little over ten per cent. or whether the total area covered by the trees is just over a bigha or under a bigha. As I said before, the occupancy tenant has never had this right and I do not believe that the absence of this right has caused any serious inconvenience whatever.

Dr. Zia-ud-din Ahmad : I beg to oppose the amendment, as this would make the definition of grove very difficult and complicated. At present I understand very clearly what a grove means, but with this definition we will have to see how much area does a grove occupy, whether it is over a bigha or less; how many trees it has got, what is the height of the trees and what are their dimensions. All these things will form an essential part of the definition of grove. I have been hearing all the time that the rules of grammar are very complicated. We are told that plurals are formed by adding 's' to the singular, but words ending in 'x' are exceptions. The plural of 'ox' is 'oxen'. But there is an exception to this exception also, and it is the word 'box'. The plural of 'box' is 'boxes', not 'boxen'. The same will be the case with the definition of the word 'grove' if we accept this amendment. The land will have to be measured. It will have to be seen how many trees have been planted and whether they are mango trees, if so of what variety, whether they can be used for building purposes and whether they were planted for the purpose of fuel. All these complications will arise. I therefore beg to oppose this amendment.

Pandit Nanak Chand : I have nothing more to add.

Question, that the proposed proviso, be added to clause 110 put and negatived.

The amendment of Babu Nemi Saran consequently fell.

Question, that clause 110 stand part of the Bill, put and agreed to.

CLAUSe 111.

A statutory tenant may construct, maintain and repair a well for improvements by statutory tenant. the irrigation of his holding, with all works incidental thereto, but may not, except with the written consent of his landholder or the permission of the court obtained under section 114, make any other improvement.

Maulvi Muhammad Obaid-ur-Rahman Khan : I beg to move that the word "construct" in line 1 should be deleted. My reason for moving this amendment is that it will be too much to give the right to

[Maulvi Muhammad Obaid-ur-Rahman Khan.]

construct a well to a statutory tenant who is up to this day a non-occupancy tenant and by only passing this Act he will become the statutory tenant. Certainly he must have the right of repairing his well and of maintaining it. But to give him the right to construct a well is really too much. Now-a-days there are many methods of constructing wells and it is a great power if it be given to the tenant, because when the question of compensation will come up when the tenant dies and his heir will claim it, it will be very hard on the zamindar to pay it. Moreover, if the landlord is willing to construct a well, why should the tenant have a right of constructing it. Preference must certainly be given to the landlord to construct a well because the aim and object is to improve the field, and if a well is constructed by the landlord, the value of the land will be improved and the aim and object will be achieved and a great trouble will be avoided.

I therefore hope that the Council will accept this amendment of mine which is quite reasonable and sound.

Hon'ble Sir Sam O'Donnell: I think that the honourable mover is under a misapprehension and that when that misapprehension is removed he will realize that this amendment of his is not required. He seems to think that in the Bill we are conferring upon the statutory tenant a right which the non-occupancy tenant did not enjoy. That is not the case, because if honourable members will refer to section 89 of the present Act they will see that the non-occupancy tenant may construct a well. He is not required to obtain the consent of the landlord. As regards the point that the landlord should have the right to construct a well I would refer honourable members to clause 115 which says:—

“A landlord may make an improvement on or affecting the holding of a tenant not having a right of occupancy with or without the consent of the tenant.”

If the landlord therefore wishes to make any improvement, he can do so. I think the Council will agree that we ought not to deprive the statutory tenant of a right which the non-occupancy tenant has.

Maulvi Muhammad Obaid-ur-Rahman Khan: I beg to withdraw my amendment.

Amendment, by leave, withdrawn.

Bhaya Hanumat Prasad Singh: I beg to move that the word “*kachcha*” be added between the words “a” and “well” in clause 111.

Sir, wells are generally of two kinds—*kachcha* and *pacca*. A *kachcha* well requires generally an outlay between Rs. 50 and Rs. 100, while a *pacca* one does not cost less than Rs. 200 and in some cases even more than that. What I mean to say is that a non-occupancy tenant before the passing of this Bill, that is to say, under the present Act, has no right to construct any sort of well. Now he has been given the right of life tenancy. After his death when the question of his heir's ejection will arise the landlord shall be liable to pay compensation for the well constructed by the predecessor of the tenant. In the case of petty zamindars who are no better off than these tenants themselves it would be very difficult for them to pay the cost incurred on the construction of a *pacca* well. When the question of payment of compensation by petty

zamindars for a *kachcha* well which might be constructed by these tenants will arise it would not be very difficult for them, i.e. petty zamindars to pay it off. I have, therefore, moved my motion with this object and I hope the House will accept it.

Hon'ble Sir Sam O'Donnell : The honourable mover does not seem to have heard what I said in speaking to the previous amendment. Perhaps that was due to the noise of the rain outside. However, I will endeavour to explain it to him again. A non-occupancy tenant at present has the right to construct any kind of well, *pacca* or *kachcha*. Therefore the effect of this amendment would be to deprive the statutory tenant of a right which the non-occupancy tenant has always enjoyed. I think the Council will agree that this is not reasonable.

Maulvi Muhammad Obaid-ur-Rahman Khan : May I invite the attention of the Hon'ble the Finance Member to the proviso to section 89 and point out that the right of a non-occupancy tenant under the present Act is not the same as under the Bill, as the Bill confers greater rights on the statutory tenant than what a non-occupancy tenant possesses at present. The proviso runs thus :—

“Provided that if the landholder desires to construct the well himself, he shall have a prior right to do so.”

In this clause there is nothing like that. I think I have already said in my own speech that when the landlord is willing to make a well, he may be given preference and his right must be given priority. Under the clause as it stands at present, if a statutory tenant wants to construct a well, whether it be *kachcha* or *pacca*, he can do so without the permission of the landlord and I think it is too much. The amendment of my friend, Bhaiya Hanumat Prasad Singh, is very reasonable. By this clause we are giving to a statutory tenant something more than what he already enjoys. Therefore I hope the Hon'ble the Finance Member will accept this amendment without any hitch.

Bhaya Hanumat Prasad Singh : I have nothing more to add. I do not see my way to withdraw my amendment and I hope the House will accept it.

Hon'ble Sir Sam O'Donnell : As regards the point which has been taken by the honourable member for Aligarh, I would refer again to clause 115. Clause 115 gives the landlord the right to “make an improvement on or affecting the holding of a tenant not having a right of occupancy with or without the consent of the tenant.” Further, clause 120 provides that “if a question arises between a tenant and his landholders as to the right to make an improvement, the assistant collector in charge of the sub-division may, on the application of either party, decide the question.” So that if a question arises between a tenant and his landlord as to who should make the improvement, it is open to the landlord to go to the assistant collector and get the point decided. If a landlord is very anxious to make a well, he will make it before the tenant does so, but if he delays and the question arises as to who should make it, he can go to the court and get the matter decided.

Question put that the word “kachcha” be inserted between the words “a” and “well” in clause 111.

The House divided : Ayes, 15 ; Noes 34.

[Hon'ble Sir Sam O'Donnell.]

Ayes.

Rai Sahib Lala Jagdish Prasad.
Chaudhri Jaswant Singh.
Thakur Rajkumar Singh.
Rai Sahib Babu Dip Narayan Roy.
Bhaya Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.

Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafez Hidayat Husain.
Khan Bahadur Munshi Siddiq Ahmad.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Dr. Ganesh Prasad.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Elunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. E. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenröler.
Mr. H. C. Desanges.
Mr. H. David.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar.
Babu Nemi Saran.
Pandit Nanak Chand.
Chaudhri Badan Singh.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyay.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Mukandi Lal.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Pandit Govind Ballabh Pant: I move that between the words "well" and "for" the words "or a water channel" be inserted, and that the words "and a temporary building for the purpose mentioned in § (11) (d)" be added after the word "thereto."

Hon'ble the President: The honourable member had better leave the buildings alone for the present.

Pandit Govind Ballabh Pant: I move that the words "or a water channel" be inserted between the words "well" and "for". The clause will then run thus:—

"A statutory tenant may construct, maintain and repair a well or a water channel for the irrigation of his holding, with all works incidental thereto." . . . :

I do not think any words are needed in support of this amendment.

Hon'ble the President: I have a little doubt in this connexion. If the honourable member will look at the definition of "improvement" in sub-clause (11) (f) of clause 3, he will find that a water channel is not an improvement. The idea is to include "or a water channel" so as to enable the landlord to give compensation?

Pandit Govind Ballabh Pant: That is mentioned in clause (a) of the definition of improvement.

Hon'ble Sir Sam O'Donnell: I do not quite understand the reason for the amendment, because it seems to me that the words "with all works incidental thereto" ought to cover and do cover the water channel. Perhaps the honourable member will make the point a little clearer.

Pandit Govind Ballabh Pant: In the definition of improvement in clause 3 of sub-clause (11) there is a mention of the words "water channels." Sub-clause (a) runs thus:—

"(a) the construction of tanks, wells, water channels, and other works for the storage, supply or distribution of water for agricultural purposes."

From this it appears to me that the framers of the Bill did not include the words "water channels" in the word "well" otherwise it ought not have been mentioned here. As it is mentioned here I do suspect that the word "well" will not include water channel.

Hon'ble the President: What about the words "with all works incidental thereto"? This should include channels.

Pandit Govind Ballabh Pant: A water channel may not be connected with a well. "All works incidental thereto" may include a water channel where it is connected with a well. But where it is a water channel only there may not be any occasion for applying the words "incidental thereto". It will be open to the interpretation I am putting on it. So I hold that where a tenant has the right to construct, maintain and repair a well it follows as a corollary that he should have the right of constructing, maintaining and repairing a water channel.

Hon'ble Sir Sam O'Donnell: I think it is quite clear that so far as water channels connected with wells are concerned the statutory tenant can make them. I cannot place any other interpretation upon the words "A statutory tenant may construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto." If what the honourable member means is a water channel from a stream, then I do not think it would be covered, but on the other hand I think the honourable member is thinking of the conditions in the hills. I do not think that the question of constructing channels from streams arises in a practical shape in the plains. It is only up in the hills that such a question arises. The amendment therefore seems unnecessary.

Question that between the words "well" and "for" the words "or a water channel" be inserted, put and negatived.

Pandit Govind Ballabh Pant: I propose that the words "and a temporary building for the purpose mentioned in section 3 (11) (d)" be inserted after the word "thereto." Then the clause will run thus:— "A statutory tenant may construct, maintain and repair a well for the irrigation of his holding with all works incidental thereto, and a temporary building for the purpose mentioned in section 3 (11) (d), but may not," and so on. I would refer honourable members to clause 3(11) (d). In the definition of the word "improvement" we find sub-clause (d) which runs thus:—"The erection of buildings on the holding or in its immediate vicinity, elsewhere than on the village site, required for the convenient or profitable use or occupation of the holding." If my amendment is passed it will empower the statutory tenant to erect a temporary building for the convenient or profitable use or occupation of his holding. The position of the statutory tenant differs from that of the non-occupancy tenant, inasmuch as he has a greater interest and continuous connexion for a longer period with his holding than the non-occupancy tenant. There is a difficulty in a number of villages, and I have seen a resolution passed by a certain Kisan conference in which they

[Pandit Govind Ballabh Pant.]

have strongly urged that they should have the right of constructing buildings for the convenient or profitable use or occupation of the holdings. I do not go to the full length and do not use the word "building" as there might be a difficulty in the case of permanent buildings which may be of a valuable character. I only propose that they should have the right of constructing such temporary buildings as may be necessary for the purpose of storing grain at the time of harvest and for such other things. There can be no objection to that. I do not think there will be any objection to this proposal from any quarter as such buildings can be erected only for the convenient or profitable use or occupation of a holding and they must naturally be of a very small cost so that even if the zamindar is required to pay for them—which is a remote contingency it will not be in any way excessive, while it will be of great benefit to the tenant.

Rai Bahadur Thakur Hanuman Singh: A similar motion stands in my name. So, instead of moving it I would like to support the amendment which has been moved by my honourable friend Pandit Govind Ballabh Pant. If an ex-proprietary tenant or an occupancy tenant has been considered to require a temporary building for his own shelter and for stabling his cattle, I think a statutory tenant equally requires these buildings. So it is very fair that he too should be allowed to construct temporary buildings for himself, for his cattle and for other purposes on his holdings which he may require for the proper cultivation of the holding with profit.

Hon'ble Sir Sam O'Donnell: I see no objection to this proposal, provided that the right of constructing such buildings is limited to the tenants' own holding. I do not think that he ought to be allowed to construct buildings on land which is not part of his holding.

Pandit Govind Ballabh Pant: I do not mean that.

Hon'ble Sir Sam O'Donnell: Perhaps the honourable member will make an addition to that effect. If the buildings are of a purely temporary character I do not think that any harm will be done by allowing the tenant to build on his own holding. If at any time he is ejected the building can be removed; and no damage will be caused to any person.

Maulvi Muhammad Obaid ur-Rahman Khan: I beg to oppose this amendment which is now before the House. I am really disappointed to see that the Hon'ble the Finance Member has accepted it. If I may be allowed to say so, it is perhaps due to our thin attendance this morning that we are not able to carry anything today. It is a matter of great pity that in spite of our being in a majority in the House, this morning we are in a minority. I think the amendment is an encroachment on our rights. This Bill was before the select committee. Neither the swarajist members nor the Government ever thought of making the addition which they are proposing at this moment. I am sure that it is a matter for great regret to us. I may say that if a statutory tenant is allowed to erect any sort of building in his holding, it will be certainly for a short time, because no one knows when death will occur. After the death of a tenant the landlord will have to rent out the land to another tenant. It is not possible to say whether the new tenant would like to

have the building in his holding or not. If he does not like to have it, then the poor zamindar will have to pay compensation to the successors of the tenant who has died and at the same time he will have to remove that building. I think in this way he will be put to a great trouble and difficulty. I hope the House will not allow the zamindar to be put in this unfortunate position. Had we been in a majority certainly we would not have allowed such an amendment to be passed in the House. The amendment is very irrelevant and quite unjustified.

Babu Sangam Lal : With your permission I would like to add three words, viz., "On his holding" after the words "temporary building," just to meet the objection of the Hon'ble the Finance Member.

Hon'ble the President : Is there any objection to this amendment being moved?

Objection being raised by some honourable members, the amendment was disallowed.

Pandit Nanak Chand : I intended to move an amendment on the lines of the amendment moved by my friend Lala Sangam Lal. But that amendment having been opposed on behalf of my zamindar friends, the only alternative that is left to me is to support the present amendment. Even without the amendment of Lala Sangam Lal, the amendment ought to be interpreted to mean that the tenant is allowed to construct buildings which are necessary for the proper care of his crops and for conveniently stocking the agricultural implements, etc., on a portion of his own holding. I think the fear entertained by the Hon'ble the Finance Member that this provision if incorporated without an amendment which was moved by Lala Sangam Lal might mean that the tenant could put up buildings on lands which do not form part of his holdings is far-fetched and I feel certain that the courts will eject a tenant if he constructs such a building over land which does not form part of his holding in case the landlord wants to eject him. Therefore I think there will be no difficulty in preventing tenants from encroaching upon the rights of landlords in lands which do not form part of the holdings of the tenants.

Pandit Govind Ballabh Pant : I assure my honourable friend the member for Aligarh that the notice of this amendment was given before we started discussion in this House and that it has not been brought in by way of a surprise today. I also wish to assure him . . .

Maulvi Muhammad Obaid-ur-Rahman Khan : On a point of personal explanation, Sir. I never said that about the honourable member moving the amendment. I said about the acceptance of the amendment by the Government.

Pandit Govind Ballabh Pant : As to the Government, they are much stronger than any of us here. So it is unnecessary for me to advocate their cause. I have no doubt that the Hon'ble the Finance Member expressed his willingness to accept this amendment because he thought that it did not affect in the least the vital interest of anybody and that it would be helpful to the tenants concerned without being harmful to the landlords.

The reason why I have moved this amendment is that I thought it was an eminently reasonable proposal. Honourable members sitting on the cross benches should realize that such improvements as are

[Pundit Govind Ballabh Pant.]

made by the tenants on their holdings at their own cost are mainly for the benefit of the holdings and thus do indirectly benefit the landlords. It should, therefore, be the policy of the landlords to encourage such improvements by the tenants on their holdings and not to stand in their way. In the circumstances I do not see how a landlord can possibly have any objection to the tenants' effecting improvements in their holdings.

There was some mention made of the select committee. We have to carry out business in this House in accordance with the orders and rulings pronounced by you, Sir, and under them it is not open to me to say whether such a proposal was or was not moved in the select committee or whether the one actually moved there was more drastic or milder than the one moved here. As to the proposal itself, I do not see how it can give rise to the apprehensions that have been expressed here. The proposal only means that a tenant will be allowed to erect a temporary building on his own holding and not, of course, on that of another tenant. I think that, even if the words proposed by the honourable member for Ailhabad are not inserted, there will be no occasion whatsoever for misapprehension. A tenant will only be entitled to erect a temporary building on his holding, and when he is ejected from the holding, it will always be open to the landlord to ask him to remove the temporary building also.

Hon'ble Sir Sam O'Donnell: My honourable friend from Aligarh has complained that we have supported this amendment and has suggested that we have done so because his party for the moment is not in a majority in the Council. In this connexion I should like to remind him that we have opposed and supported various amendments throughout the discussion of the Bill at times when his party was in a majority. I would also remind him that we have had several other amendments today, most of which were opposed by his party as well as by us. There was, e.g. an amendment to the effect that an occupancy tenant should be allowed to erect permanent buildings on his holding, and we opposed it. Here, it is a question of temporary buildings. I quite agree with the honourable member for Naini Tal that although the words "on his holding" have not been inserted in the amendment because of the opposition of certain members, nevertheless the effect will be practically the same. The tenant can only construct a temporary building on his holding, and I cannot therefore understand how the interests of the landlord will suffer. If the tenant is ejected at any time, the temporary building will be removed. I can see the objection to the erection of a permanent building on a holding, because that will alter the character of the holding; but temporary buildings, such as huts, chhappars and cattle-sheds can be removed in a couple of hours. I think the amendment is quite a reasonable one, and the Council ought to accept it.

Question, that the words "and a temporary building for the purpose mentioned in section 3 (11) (d)" be inserted after the word "thereto" in clause 111, put and agreed to.

Rao Sahib Abdul Hameed Khan :

اگر ایک آنریبل ممبر صاحب نے division کے لئے فہمائش کی ہے تو
اگر دوسرے صاحب نے ان کو سہورت (support) بھی کیا تھا لیکن division کے
متعلق کچھ ارشاد نہیں ہوا •

Hon'ble the President :

قویون (division) کے ایسے تب کہا گیا تھا جب کہ میں دوبارہ Ayes
کہہ چکا تھا شاید ممبر صاحب نے نہیں دیکھا غالباً یہاں اندھیرا بہت ہی -
(تہقیر) *

Mr. Mukandi Lal : I beg to move that in line 4 of clause 111 between "thereto" and "but" the words "or may plant trees" be added. I know the fate of various other amendments which I have made with reference to "trees," but still I cannot help moving my amendment. If a statutory tenant is allowed to plant trees, it would be a great boon to him. It may be said that if he is allowed to plant trees on his holding, it will become a grove. My submission is that the planting of trees should be stopped at a point when it is found that this will turn the holding into a grove. The aid of grammarians, mathematicians and lexicographers has been invoked and I should not be surprised if, in the case of planting of trees, the aid of photographers also is invoked. I have moved this amendment simply to satisfy the zamindar members. The Government will oppose it and I hope the zamindar members will not now complain that the Government is not conceding to their demands because they are in a minority today.

Hon'ble Sir Sam O'Donnell : The Council has already decided that occupancy and expropriary tenants should not be allowed to plant trees except with the consent of the landholder or where there is a local custom. The reasons that I have given in regard to the occupancy and expropriary tenants apply with still greater force to the case of statutory tenants.

Question, that the above words be inserted, put and negatived.

Maulvi Muhammad Obaid-ur-Rahman Khan : I beg to move that in clause 111 the following words in lines 5 and 6 "or the permission of the court obtained under section 114" be deleted. The addition which has already been made as to the erection of a temporary building in the holding of a statutory tenant, I think, must put an end to the improvements to be made by the statutory tenant against the will of the zamindar. So far as I know, one of the main objects of this Bill is to decrease litigation, but giving powers for suing cases means an increase in litigation. If the zamindar is willing that a statutory tenant should make any improvement, except a well or a temporary building, certainly he may have a right to do so. But if the landlord takes an objection, there is no reason to suppose that the tenant should have a right to go to the court. If the case is decided against the landlord, this will lead to further litigation, and if it is decided against the tenant, it will cost much expenditure in vain. It is quite possible that the decision may be against the wishes of the tenant, so it will make him suffer instead of gaining anything. In the case of section 40 we have removed the discretionary power of the collector, and I hope my swarajist friends will also support me in this case.

Hon'ble Sir Sam O'Donnell : I think that this clause is a very reasonable and salutary provision. It is intended to meet the case of a refusal on no reasonable grounds by a landlord to allow a tenant to construct an improvement which is for the benefit of the holding and ought to be constructed. The tenant has to go to the court. If the

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improvement is not one which ought to be constructed, his application will be dismissed with costs. It will be sanctioned by the court only if the court is satisfied that the improvement is one which ought to be made and that the landlord has no valid ground for refusing his consent. It has been said that this provision will lead to litigation. There is a similar provision in the old Oadh Rent Act of 1886, and the number of applications has been very small. It is said too that there will be appeals from one court to another. If honourable members, however, will refer to clause 120 they will see that the decision of the assistant collector in this matter is final. There is, therefore, no substance in the argument that this clause is likely to increase litigation. I am quite sure that the number of applications will be very small. A reasonable landlord, of course, will have no objection to such improvement: it is only in the case of an exceptionally unreasonable landlord that the tenant may have to go to the court.

Manvi Muhammad Obaid-ur-Rahman Khan: When the proposal that seven-year leases should go out was before the House, the Government feared that there would be a large number of cases: now they are hopeful that there will be a very small number of cases. There is no reason to suppose that it will be so, because when the tenant will realize that he has a right to go to the court, he will often do so. There was a similar provision in the case of section 40, but it was removed by this House. It is, therefore, fair that we ought to follow the same principle here. I hope that the amendment that I have proposed will be accepted by the House.

Question put, that the words "or the permission of the court obtained under section 114," stand part of the clause.

The House divided: Ayes, 35; Noes, 18.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tildard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Nortou.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksona.
Babu Bhagwati Sahai Bedar.
Pandit Ranuk Chand.
Babu Nemi Sarau.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyay.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Mr. Mukundi Lal.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Noes.

Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Prataap Narayan Singh, Rai Bahadur.

Bhaya Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Hao Sahib Abdul Hameed Khan.
Khan Bahadur Chaudhri Amir Hassan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.

Nos.

Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Saiyid Muhammad Ashiq
Husain.

Khan Bahadur Munshi Siddiq Ahmad.
Rai Bahadur Lala Mathura Prasad Meh-
rotra.

Maulvi Muhammad Obaid-ur-Rahman Khan's amendment was therefore negatived.

Question that clause III, as amended, stand part of the Bill, put and agreed to.

CLAUSE 112.

(1) No other tenant shall make any improvement except with the written consent of the landholder.
Improvements by any other tenant or sub-tenant.

(2) No sub-tenant shall make any improvement unless—

(a) It is an improvement which his landholder could himself have made, and

(b) he has obtained the written consent of his landholder.

Mr. Mukandi Lal : I beg to move that in clause 112 the following be added between the word "improvement" and "except":—

"other than which he makes for the improvement of the productivity of the land or better outturn of the crop."

This amendment is also of the same nature as I had the good fortune of moving this morning one after another and the misfortune of getting them defeated. However, just with a view to give any moral support to the lofty aim that most of us have in view, that is to say to improve the soil and the land about which we are legislating, I have deliberately used the words "improvement which is likely to add to the productivity of the soil or better outturn of the crop." I have deliberately excluded such words which are not directly contributory to the outturn of good crop or improve the productivity of the soil. Take the case of a tenant, who may, with a view to annoy the zamindar, put a hedge round his holding. Similarly, a tenant might take into his head of putting a barbed wire ring round his holding for decorative or protective purposes. Therefore he would be precluded from making such sentimental or decorative improvements. If we do not allow them to do this then we can imagine that under one pretext or another there can be cases where even scientific manuring can be said to be improvement of the holding. Therefore, I hope that my zamindar friends will have no objection to have these words inserted.

Hon'ble Sir Sam O'Donnell : I believe the Council will readily realize that the provision in the Bill ought to be retained and that this amendment ought not to be carried. For practical purposes the non-occupancy tenants will be tenants of *sir*; we may neglect tenants of *singhara* land or pasture land. Now the tenant of *sir* land is a man who has a very temporary right in the land. He holds from year to year and further it is not desirable that he should hold for any great length of time. As the Council knows, the policy of the Bill is not to encourage the continuous sub-letting of *sir*. A tenant of *sir* is a man who holds for a year and when a tenant holds for a very short period it is quite reasonable that he should not be allowed to make improvements except with the consent of the landlord. His position is quite

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different from that of the occupancy tenant who has a permanent heritable interest in the land.

Question, that the above words be inserted, put and negatived.

Mr. Mukandi Lal: I beg to move

Hon'ble the President: Before the honourable member moves I would invite his attention to sub-clause (a) which would render his amendment superfluous. Is that not so?

Mr. Mukandi Lal: My reading of the clause is that this clause specifically excludes the sub-tenant from making an improvement.

Hon'ble the President: This sub-clause runs:—“Unless it is an improvement which his landholder would himself have made,” and his landholder would mean the tenant for whom he is holding. This is clear from the definition of the word “landholder” in clause 3.

Mr. Mukandi Lal: Consent is necessary.

Hon'ble the President: If the honourable member wants the consent to be deleted, let him move the deletion of sub-clause (b) rather than the whole sub-clause. Will the honourable member move it in that form?

Mr. Mukandi Lal: I beg to move that sub-clause (b) of sub-clause (2) of clause 112 be deleted. I think that when we have so far agreed that a tenant should have the right of having some necessary improvements, the sub-tenant should occupy the same position as the tenant, and this invidious difference that is made between a sub-tenant and a tenant should not be allowed to remain on the statute book.

Hon'ble Sir Sam O'Donnell: The arguments against this are pretty well the same as those which I advanced in the case of the non-occupancy tenant, the sub-tenant has a very limited interest in the land and ought not to be allowed to make improvements on it without the consent of the landlord. His landholder might himself wish to make an improvement and if the sub-tenant were allowed to make it the result might be to land the tenant-in-chief in difficulty with his landlord.

Question, that sub-clause (b) stand part put and agreed to.

Question, that clause 112 stand part of the Bill, put and agreed to.

CLAUSE 113.

Nothing in this chapter shall entitle a tenant to make, except with the written consent of the *landlord*, any improvement which may substantially diminish the value of other land belonging to the *landlord*.

Restriction on improvement which may injure other land.

Khan Bahadur Mr. Muhammad Aslam Saifi: I move that in clause 113 for the words “belonging to the landlord” substitute the words “in the village.”

It is not necessary for me to make an elaborate speech on this point. My object is simply to widen the scope of this section, because if any improvements are to be made they ought to be made with the consent of the landlord, otherwise the result will be to diminish the value of

the land and it will lead to increase in litigation which ought to be minimized. That is the only reason why I put forward this amendment.

Hon'ble Sir Sam O'Donnell: I think that the honourable member will realize on reflection that this is not a matter which should be regulated in this Bill. This is a Bill which seeks to regulate the relation between the tenant and his landlord. The relation between the tenant of one landlord and another landlord is really not a matter for a tenancy Bill, it is a matter which should be dealt with by the civil court. That is the real objection to this amendment.

Amendment by leave withdrawn.

Mr. Mukandi Lal: I move that the entire clause 113 be deleted and my aim in doing so is this: To my mind it is really a penalizing clause which can be made use of by a landlord in stopping a tenant from making such improvements on his holding that are likely even indirectly to affect his holding. Suppose, for instance, he cultivates his land in such a manner and sows crops in such a way or of such a quality that ultimately he turns out a better crop than a neighbouring holding belonging to the landlord. If this clause is allowed to remain in the Bill, the result will be that it will be discouraging his using improved methods and using better seeds and getting a better outturn from his crop than the other neighbouring tenants of the same landlord. Therefore, to my mind this clause is a penalizing clause and would discourage a good and enterprising tenant from improving the outturn of his holding, and should be deleted.

Hon'ble Sir Sam O'Donnell: I really cannot understand how anybody can reasonably oppose this clause. The clause says that the tenant may not make an improvement which will substantially diminish the value of other land belonging to the landlord. Why should the tenant be allowed to substantially diminish the value of other land belonging to the landlord except with the consent of the landlord? I really think it unnecessary to argue this point at any length, because the amendment is so unreasonable that I have no doubt that the Council will reject it without a moment's hesitation.

Question, that clause 113 stand part of the Bill, put and agreed to.

CLAUSE 114.

(1) If a statutory tenant applies for the written consent of his landlord to the making of an improvement which he may not make without such consent and the landlord omits or refuses to grant it, the tenant may apply to the collector or the assistant collector in charge of the sub-division for permission to make the improvement.

(2) When an application is made to the collector or an assistant collector under sub-section (1) he shall take into consideration any objection which the landlord may have to urge on either of the following grounds, namely,—

(a) that the work proposed is not an improvement as defined in section 3(11) of this Act, or is too costly, or

(b) that the landlord is himself prepared to make the improvement,

and shall then either grant the permission on such conditions as he considers fair and equitable, or refuse the application.

Mr. Nemi Saran : I beg to move that the word "statutory" in the first line be deleted. What I mean by this amendment is that this clause should apply to the statutory tenant as well as to the tenant with a right of occupancy. We know that the tenant with a right of occupancy is debarred from making certain improvements under section 110 and he can make them with the written consent of the landlord only. Therefore, it is necessary that we should also provide a safeguard to an occupancy tenant, that if his landlord refuses to give his written consent without any reasonable cause then he should be entitled to go to the court and plead that the improvement which he wants to make is reasonable and that the refusal of the landlord was arbitrary and reasonable, and that he should be allowed to make it. With this object in view, I beg to move this amendment.

Hon'ble Sir Sam O'Donnell : I see no objection to including other tenants in this clause. The insertion of the word "statutory" appears to be simply due to the fact that in the Board's draft Bill the clause applied to non-occupancy tenants and when non-occupancy tenants became in our bill statutory tenants, the word "statutory" was substituted. I do not think the amendment is of any great importance, simply because occupancy and exproprietary tenant can make so many improvements without the consent of the landlord. On grounds of principle, however, I do not see why we should deprive the occupancy tenants of the right which we are giving to statutory tenants.

Question, that the word "statutory" in clause 114 stand part of the clause, put and negatived.

Maulvi Muhammad Obaid-ur-Rahman Khan : I beg to move that the whole clause be deleted. My reasons are the same as those which I have given already.

Hon'ble the President : I am afraid the honourable member is debarred by the previous decision of this House from moving this amendment, because the House has already passed the words "or the permission of the court obtained under section 114" in clause 111. This amendment cannot be moved.

Muhammad Maulvi Obaid-ur-Rahman Khan : May I submit that just now you said that you would first take specific amendments and then take the deletion as you have done in the case of clause 113.

Hon'ble the President : I am afraid my words have not been properly caught by the honourable member. If he will refer to clause 111 he will find that the words "or the permission of the court obtained under section 114" have already been allowed to stand part of that clause by the Council. If the amendment of the honourable member is now taken up it will be going back on the decision already arrived at by the House. Therefore the amendment cannot be moved.

Rai Sahib Lala Jagdish Prasad : I beg to move that at the end of the clause the following proviso be added:—

"Provided that no tenant shall be entitled to claim compensation at the time of his eviction from the holding in respect of an improvement made by him with the permission of the court and without the landholder's written consent."

As the House is aware the zamindars feel that the right of making an improvement with the permission of the court and without the consent of the zamindar should not be allowed to a tenant. Up to this time, Sir, under the existing Act. . . .

Hon'ble the President : Order, Order. Does this proviso fit in here or under clause 115? Clause 116 governs compensation for improvements. The honourable member's amendment relates to compensation for improvements. I think it will fit in better under clause 116.

Rai Sahib Lala Jagdish Prasad : I think, Sir, that clause 116 is a general clause, governing compensation for all sorts of improvements. My proviso relates only to those improvements for which the tenant obtains the permission of the court against the landlord's consent.

Hon'ble the President : I shall permit the honourable member to move his amendment with necessary modifications under clause 116.

Question, that clause 114, as amended, stand part of the Bill, put and agreed to.

CLAUSE 115.

(1) A *landlord* may make an improvement on or affecting the holding of a tenant not having a right of occupancy with or without the consent of the tenant.

(2) A *landlord* may make an improvement on or affecting the holding of a tenant having a right of occupancy with the *written* consent of the tenant or if the tenant refuses his consent, with the permission of the collector or of the assistant collector in charge of the sub-division :

Provided that, notwithstanding anything in this sub-section, a landlord may construct a well on or affecting the holding of a tenant having a right of occupancy without the consent of the tenant.

(3) A *landlord* making an improvement on or affecting the holding of any tenant shall be liable to compensate the tenant for any loss which he may cause to the tenant when making it.

(4) If the effect of an improvement made by a *landlord* is to impair the productive powers of any land held by any tenant from such *landlord*, such tenant shall, in addition to any compensation which may be awarded to him under sub-section (3), be entitled to such abatement of his rent as the court considers just.

Mr. Mukandi Lal : I move that the words 'or without' in lines 8 and 4 may be deleted.

As stress has been laid on obtaining the consent so far as the zamindars are concerned, so I want that the same right should be allowed to the tenants also and my reason for asking for this favour on behalf of the tenant is this. It is just possible that a hard-hearted zamindar, if he wanted to harass his tenant, may extend his operations of improvement for such a length of time that it will really be a great hardship on the tenant, if he carries on his operations for a long time. Supposing that a zamindar says that he wants to dig a tank or a well on the holding of a tenant. He may start it and carry on these operations for such a length of time that it may prevent the tenant from raising a crop in the field, for some time. Therefore under such circumstances I think it is absolutely necessary that the zamindar should effect these improvements with the consent of the tenant and therefore I move that the words "or without" be deleted.

Hon'ble Sir Sam O'Donnell: I think that the contingency to which the honourable member refers, it strikes me, is remarkably unlikely. It would, however, be possible under the provisions of clause 120 for the tenants of that kind to go to court to get the question decided.

Question, that in clause 115, sub-clause (1), the words "or without" stand part of the Bill, put and agreed to.

Bhaya Hanuman Prasad Singh: I raise to move that in line 3 of sub-clause (2) of clause 115 the words "or without" may be added between the words "with" and "the written consent."

In this sub-clause I find that if a landlord wishes to make any improvement on the holding of a tenant and if the tenant is not agreeable to it, the landlord shall have to apply to the court and with the permission of it he can make the improvement desired by him. This simply leads me to the conclusion that it will merely give rise to unnecessary litigation and nothing else. If there is a question of making an improvement by the landlord on the holding of a tenant, the landlord should have a right to effect it even without the consent of the tenant because the landlord possesses proprietary right over the land. It matters little whether he is a statutory, occupancy or a non-occupancy tenant. As the landlord has got proprietary right over the land, he is fully justified to make any improvement which is necessary either in the interest of the tenant or the landlord himself or for the benefit of the holding. Going again and again to the court would mean nothing but rise in litigation which would prove ruinous both to the landlord and the tenant. Sir, it is with this object that I move this amendment and I hope the House will accept it.

Hon'ble Sir Sam O'Donnell: Under the proviso to this clause the landlord can construct a well on the holding of a tenant having a right of occupancy without the consent of the tenant. Of course wells are by far the most common improvement. If a landlord wishes to make another improvement, such as constructing buildings of a permanent character or digging a tank, I think he ought to have the consent of the occupancy tenant, because after all the occupancy tenant has a permanent interest in the land. If the occupancy tenant refuses to give his consent without any good reason, then the case may be taken to the court. It is very unlikely that there will be much litigation over this clause, because the improvements other than wells which the landlord may desire to make and to which the tenant might object are likely to be extremely few.

Bhaya Hanumat Prasad Singh: Under the proviso to sub-clause (1) I find that the landlord has got the right to construct a well only, but I do not know what will be the fate of those districts in which water channels or *kulas* as they are called are more necessary than the wells, say, for example, tarai districts, namely Gorakhpur and Basti. In these districts you will find that the number of wells is not so large as the number of water channels. Sir, if a landlord wishes to construct a water channel, he cannot do so under the present Bill which is shortly going to be an Act unless he goes to the court and obtains permission from it. Under these circumstances I do not see my way to withdraw my amendment.

Hon'ble Sir Sam O'Donnell: The honourable member has referred to the district of Gorakhpur. I served in that district for four years and I am surprised to hear that the number of wells there is not large. The water level is about ten feet from the surface and the number of kachcha wells in that district is simply enormous. As to water channels, is it likely that a tenant will object to the landlord making a water channel required for the cultivation of the soil? He will be only too glad to see the landlord make it for him.

Hon'ble the President: The question is that between the words "with" and "the written consent" the words "or without" be added. Those who are of this opinion will say "aye"; those who are of the contrary opinion will say "No".

The Hon'ble the President said: "The Noes have it." Before declaring finally in favour of the "Noes" Bhaya Hanumat Prasad Singh stood up.

Hon'ble the President: The honourable member did not say "aye." What does the honourable member wish to say?

Bhaya Hanumat Prasad Singh: I challenge a division.

Hon'ble the President: I am not disposed to grant divisions so frequently like this. We have already had several divisions with well-known results. In this case nobody said "aye" when I called that those who are of this opinion will say "aye." In the circumstances the call for a division would be of an obstructive nature.

The Noes have it. The amendment is accordingly lost.

Mr. Mukandi Lal: I beg to move that all the words occurring after "tenant" in line 3 from "or if" to the end of the clause be deleted.

This clause is on a slightly different footing from the previous clause. The previous clause referred to non-occupancy tenants while this clause refers to occupancy tenants. We have all along been led to believe that occupancy tenants enjoy somewhat higher rights and privileges than other tenants. Therefore occupancy tenants for all practical purposes are something like small proprietors. The consent of occupancy tenants should be taken by the landlord when he wishes to effect improvements. I cannot imagine that any occupancy tenant who knows that he will enjoy the fruits of the improvement on the holding should refuse consent to a landlord who wants to make an improvement on his holding. Therefore his consent must be taken by the landlord before he makes improvements and the words which I have indicated, viz., from "or if" to the end of the clause should be deleted.

Hon'ble Sir Sam O'Donnell: This seems to be a very illogical proposal on the part of the honourable member. The Council has just agreed that every tenant should have the right to apply to the court if the landlord refuses to allow him to make an improvement. That being so, I think the landlord also should have a right of appeal to the court if the tenant refuses to allow him to make an improvement.

Mr. Mukandi Lal: The Hon'ble the Finance Member has drawn my attention to clause 120. Under that clause it is not for the court to decide whether the operations of improvement that are being carried on by a landlord are of such a nature that they will take a very long time. There is no provision to penalize or bring to book a landlord

Manvi Muhammad Obaid-ur-Rahman Khan : No, I only referred to it because the Hon'ble the Finance Member referred to statutory tenants.

Question that the above proviso be added to clause 115 (e) put and negatived.

Babu Nemi Saran : I beg to move that the following new sub-clause be added :—

"(5) If any well or other improvement constructed by the landlord on the holding of a tenant also benefits any other holding not in the possession of the same tenant, the tenant shall have the primary right of using it for the benefit of his holding, and nobody shall be entitled to enter upon his holding to use the improvement without such tenant's permission."

I was actuated to table this amendment on reading clause 115 which to my mind gives rise to certain ambiguous interpretations. If you look at sub-clause (1), it says:—"A landlord may make an improvement on or affecting the holding." Similarly, sub-clause (2) says:—"A landlord may make an improvement on or affecting the holding." The words "on or affecting the holding" to my mind mean that the landlord is entitled to make an improvement on the holding of a tenant, though it may not affect that holding. For instance, a zamindar may have his own agricultural holding in the vicinity of the holding of a tenant and he wants to make an improvement which may take, say, a certain area of his own agricultural land if he makes it in that land. But to avoid that, he may make that improvement in the holding of an adjacent tenant and thereby he may benefit his holding only. There may be also cases, in which one improvement made in the holding of a certain tenant may affect the holding of another tenant. In other words, the holding of two different tenants may be affected by that improvement. In that case there might arise the question as to who has got the prior right to use it. That is the first question which arises. The second question which will arise is that whether another tenant or the landlord is entitled to enter upon the holding of the tenant on which the improvement is made in order to use it for the benefit of his holding.

In order to clear these two issues which may arise, and which may give rise to litigation, it is very necessary that certain provisions should be made which should declare the rights of both the parties concerned. In my amendment I have made it clear that if an improvement is effected on the holding of another tenant, then that tenant shall have prior right for using it for the benefit of his own holding; and in case it also benefits another tenant, the other tenant or the landlord, as the case may be, may also be entitled to enter upon the holding for the use of that improvement only with the permission of the tenant concerned. Otherwise it may give rise to many troubles. I hope Government will see its way to accept the amendment.

Hon'ble Sir Sam O'Donnell : I think there are objections to this proposal. Take for example the construction of a tube-well. You cannot construct a tube-well anywhere and everywhere. You have to construct the tube-well where the conditions are suitable. It may well happen that the main benefit of the tube-well will go to other holdings. The tenant on whose holding it is constructed would certainly benefit, but the main benefit might necessarily, owing to the physical conditions of

the area, go to other holdings. I do not think that the tenant in that case would have any ground for complaint. He ought not to be allowed to absorb, or attempt to absorb, the greater portion of the benefit. I think, too, that these are matters which might well be left to private arrangement rather than to legislation.

Babu Nemi Saran : The example which has been cited by the Hon'ble the Finance Member is one of those rare examples which could always be cited to refute any argument in order to amend or reject any provision of any Act. Hundreds of such rare instances can be pointed out. But dealing with the example cited by the Hon'ble the Finance Member I may say that the zamindar should acquire the land before he wants to erect a tube-well. Otherwise the consequences will be really serious. If you say that the tube-well is the property of the landlord, then he has got a right of entering upon the land whenever he likes, but sometimes the question of entering into the land might give rise to difficulties. It may be in the middle of the holding of the tenant.

Secondly, Sir, if you leave aside that example, and take the case of a well. If you look at sub-clause (2) these words were put in by the select committee . . .

Hon'ble the President : The honourable member should not refer . . .

Babu Nemi Saran : I withdraw that, Sir. If you look at the effect of that proviso you will find that the zamindar is allowed to construct a well wherever he likes without either the consent of the tenant or even the court. In that case it may arise that the ordinary well may be constructed on the occupancy tenant's holding. Then the question will arise between the landlord and the tenant on whose holding the well is constructed as to who has got the prior right for the use of that well. It is not uncommon that such a question will arise. It will be very difficult for the courts, according to the present provisions of the Bill, to award one way or the other. Because the land belongs to the tenant, while the improvements are effected at the expense of the landlord. Therefore it is necessary that there should be a declaration of the rights of the two parties. One party is the person on whose land the improvement is made and the other party is the person at whose expense the improvement is effected. Unless this is decided by the provisions of this Act, it will give rise to voluminous litigation and voluminous rulings from the Board of Revenue. I hope that if this amendment does not actually convey my meaning it may be amended, and some such declaration may be made by the provisions of this Bill.

Hon'ble Sir Sam O'Donnell : The honourable mover has said that it is easy to cite hundreds of exemplar cases as arguments against any amendment. Well, Sir, if there are hundreds of cases in which an amendment would not be suitable, I think that is a good argument against the amendment. The honourable member has not really attempted to meet my point about tube-wells. It is very important that tube-wells should be constructed. They are a most valuable form of agricultural improvement. What will happen under his amendment? In the first place the tenant on whose holding a tube-well is constructed is to have the primary right of using it for the benefit of his holding; and secondly, nobody will be entitled to enter upon his holding to use the improvement.

[Hon'ble Sir Sam O'Donnell.]

without his permission. That being the position, the tenant might say : " I will not permit you to take any water from this tube-well ; I want the water for my own use, and you must wait as long as I choose." Thus the whole value of the tube-well, which might have cost Rs. 10,000, would be entirely lost. Is that in the interest of agricultural development or of the tenants themselves ?

Question that the above proviso be added to clause 115 put and negatived.

Question that clause 115 stand part of the Bill put and agreed to.

CLAUSE 116.

A tenant who has made an improvement which he is entitled to make shall be entitled to compensation for such improvement in the following cases :—

- (a) when a decree or order for his ejectment is passed ; and
- (b) when he has been wrongfully dispossessed by his landholder and has not recovered possession of his holding ;

Provided, *first*, that compensation shall not be payable for any improvement made thirty years or more before the date on which the ejectment is to take effect ;

Provided, secondly, that a tenant ejected in execution of a decree or in pursuance of a notice of ejectment, shall not be entitled to compensation for any improvement begun by him after the institution of the suit, or service of the notice, which resulted in his ejectment.

Pandit Govind Ballabh Pant : I beg to move that after the word "decree" in the proviso to clause 116 the words "passed in a suit for ejectment" be added.

The clause as it stands does not fully bring out the meaning of the framers of the Bill. The word "decree" here is likely to cause difficulty, unless it is qualified by the words I have proposed. If my amendment is not made, a tenant who is ejected in execution of a decree passed in a suit for ejectment will not be entitled to any compensation for the improvement made by him after the institution of the suit for ejectment but without notice of the suit. Consequently, in order to remedy this defect, I propose the addition of the words "passed in a suit for ejectment."

Hon'ble Sir Sam O'Donnell : This proviso was introduced by the select committee and is based on the Punjab Act. The object is to prevent a tenant who knows that he is going to be ejected penalizing the landlord by making improvements for which the landlord will have to compensate him. I take it the object of this amendment is simply to confine the proviso to the case of a tenant who is going to be ejected. That being so, it seems to me that the amendment is an improvement and may be accepted.

Question that the above words be inserted in the second proviso to clause 116 put and agreed to.

Pandit Govind Ballabh Pant : I propose that the words "service of the summons in" be substituted for the words "institution of".

I do not think it is necessary for me to say many words to commend the amendment. The proviso says that a tenant ejected in execution of a decree or in pursuance of a notice of ejectment shall not be entitled to compensation for any improvement begun by him after the institution of suit or service of the notice, which resulted in his ejectment. It will therefore appear that the proviso contravenes the accepted principle that a tenant should not be penalized so long as he does not receive notice of the proceedings taken against him. Consequently, I am proposing that until a tenant receives notice of the suit, he should not be mulcted for any improvements that he might make in his ignorance of the institution of the suit.

Khan Bahadur Hafiz Hidayat Husain : I regret I must oppose the amendment. My learned friend the leader of the Swaraj party has drawn the attention of the Council to the doctrine of *lis pendens* to support the theory that suit becomes contentious on service of summons. I wonder if he remembers the case decided by the Privy Council. I mean Faiyaz Muhammad's case reported in 4, Allahabad Law Journal, in which it has been held that suit becomes contentious from the date of institution of a suit and not from the service or issue of summons. This rule is based on sound sense; for a tenant might evade the service of a summons for months and months and in the meantime push on with the improvements to entitle him to compensation. Indeed, we know that in several ordinary cases substituted service under order V, rule 20, of the Civil Procedure Code, has to be ordered. If therefore services of summonses is accepted, much of what this section aims at will be nullified. Therefore, the wording of the proviso should be in keeping with the decision of the Privy Council reported in 4, Allahabad Law Journal, and the doctrine of *lis pendens* contained in section 52 of the Transfer of Property Act, to which my honourable friend, the member from Naini Tal, has adverted.

Hon'ble Sir Sam O'Donnell : I am afraid I am not competent to enter into the doctrine of *lis pendens*. But looking at the matter from the practical point of view, I think the amendment proposed by the honourable member for Naini Tal is quite reasonable. It seems to me that the tenant should not be penalized if he has no knowledge of the institution of suit. It also seems very unlikely that the summons will not be served on the tenants. I am aware that in civil cases summonses are not always served; but I do not think that any such difficulty will really arise in a suit of ejectment against a tenant. I think that the landlord will have no difficulty whatever in having the summons served. In fact I did not think that there could be any objection to the amendment of the honourable member until we were confronted with the difficult and complicated question of *lis pendens*.

Pandit Govind Ballabh Pant : The case to which the honourable member has referred was a case of pre-emption.

Hon'ble the President : Honourable members should remember that this is not a court of law and that we should do well to avoid a combat between two legal luminaries in this connexion.

Pandit Govind Ballabh Pant : In view of your ruling, Sir, we are now to ignore altogether the decision quoted by my honourable friend Khan Bahadur Hafiz Hidayat Husain. There is therefore nothing else for me to defend. I hope honourable members will accept my amendment.

Question that the words "institution of" do stand part of the clause put and negatived.

Question that the words "service of summons in" be inserted there put and agreed to.

Mr. Mukandi Lal : I move that the proviso which is in italics at the end of the clause be deleted. The ways in which our zamindar friends and landlords can get the summons served and obtain decrees from the court are well known. Therefore it seems difficult for the tenant to know the correct time when the summons is supposed to be served : it would be extremely difficult for the law courts to exactly know the period at which the tenant started his improvements. The consequence would be more litigation, of which my zamindar friends as well as the Government are afraid. One of the objects of this Bill is to decrease litigation. By this proviso this object is not achieved. It will penalize the tenants who might have been carrying on the improvements without the knowledge of the suit being instituted against them. In a number of cases the summonses are served, the decrees are obtained, and the tenants know nothing about this. It is not necessary to keep this proviso, and I hope my honourable friends will support my amendment.

Hon'ble Sir Sam O'Donnell : This proviso is very important, and I will content myself with saying that I oppose the amendment. I have no doubt that the Council will reject it.

Question that the second proviso to clause 116 stand part of the Bill put and agreed to.

The Council here adjourned for lunch.

After the recess the Deputy President took the Chair.

Rai Lala Jagdish Prasad Sahib : I move that the following proviso be added at the end of clause 116:—

"Provided, thirdly, that no tenant shall be entitled to claim compensation at the time of his eviction from the holding in respect of an improvement made by him, *under section 114*, with the permission of the court and without the landlord's written consent."

(Permission was granted to the addition of the words "under section 114.")

Section 114 confers entirely a new right on the tenants, which they have not so far enjoyed under the provisions of the existing Act. A section of zamindars felt that this right ought not to have been conceded to the tenants because the tenants have already been empowered to make certain improvements with the consent of the landlord and others without his consent. They thought that the provisions of this section would operate harshly on the zamindars generally and petty proprietors particularly. But now that the Council has decided that section 114 should form part of the Bill, it is only left to us to try to minimize its effects so far as zamindars, and especially petty proprietors, are concerned.

It is clear that if this section 114 is allowed to stand in its present form without any restriction, the result will be that petty proprietors will be precluded from securing lawful ejectment of their tenants, because it is not improbable that the tenants will, in some cases, make improvements costing a good deal of money, and as the zamindars will have to pay compensation for these improvements when they claim ejectment of these tenants, it is clear that small proprietors being unable in some cases to pay the heavy cost will be precluded from securing lawful ejectments. It is, therefore, necessary that some restriction should be imposed on the provisions of section 114, and I think it is only fair that if we are giving the tenant a right to make improvements without the consent of the zamindar, with the permission of the court, he should be precluded from claiming compensation in respect of such improvements. With these words I move this amendment.

Hon'ble Sir Sam O'Donnell: It appears to me that this amendment is one which it is quite impossible to justify. A tenant desires to make a certain improvement: he goes to the landlord and he asks for his permission, the landlord refuses permission. The tenant then goes to the court; he has to satisfy the court that the permission has been refused without reasonable ground; if he does not so satisfy the court, then his application will be dismissed with costs. But suppose that he does satisfy the court that the landlord had no good reason for refusing permission, but has done so either because he wishes to be obstructive or because he desires to extract a payment from a tenant. Supposing the court finds that, why should the tenant not get his compensation later on if he is ejected from the holding? The tenant has been forced to go to the court *ex hypothesi* because the landlord has taken up an unreasonable attitude. I really cannot see on what possible ground this amendment could be justified.

Khan Bahadur Hafiz Hidayat Husain: I regret I am not able to agree with the Hon'ble the Finance Member in entertaining the objections which he raises against the acceptance of the amendment of my friend on my left. There are, Sir, two kinds of improvements, one, those that can be effected with the consent of the landlord, and the other those which can be effected without his consent. Now, it is clear from the reply of the Hon'ble the Finance Member that a tenant is, under certain circumstances, entitled to effect improvements on his land despite the wishes of the landlord. That is to say, however much against the tenant's improvement a landlord may be, if the tenant can only satisfy the court that permission is being refused to him to carry out the improvement, the court will sanction the tenant's request, and when the tenant is ejected, the landlord will be liable to compensate the tenant for the improvement that has been effected even though much against his wishes. The whole position to my mind is thus: If a tenant is anxious to effect an improvement on his land without the consent of the landlord, then as long as he remains on the land he may take advantage of it and derive benefit by it, but there is no valid reason why this improvement should be foisted on the landlord at the time the tenant is ejected. The amendment provides that the landlord will not be liable to reimburse the tenant for any improvement that he may have done despite the wishes of the landlord. I think this is very reasonable and should be allowed, because the whole point centres round the permission of the landlord. Analogy

[Khan Bahadur Hafiz Hidayat Husain]

for what I state may be drawn from lease of a house. A lessee of a house can make certain improvements, but when he vacates the house the improvement, if not removed during the currency of the lease, enures for the benefit of the landlord. The tenant has the use of it only as long as he is in occupation of the house.

Mr. H. David : I was not at all surprised to hear the speech of my friend from Muzaffarnagar, but really I was amazed to hear the speech of my legal friend Mr. Hidayat Husain, barrister-at-law. We cannot shut our eyes against the actual facts. There is certainly a tension of feeling between the zamindars and the tenants, and when there is such a feeling, we can understand to what length either party may go. If a zamindar withholds giving his consent to the improvement of his holding to a tenant, which is not perhaps improbable, who is to decide, when there is a tension of feeling, when there is estrangement between the landlords and tenants? The court must come in, and the court having come in and having taken evidence and looked into all the circumstances, comes to the conclusion that the zamindar withholds his consent wrongly, spitefully and for no good reason and allows the tenant to spend his money in improving the holding. If this amendment is allowed, then what would we do? By law we declare that the court of justice has not done justice. I think that is suicidal. In the second place, an improvement has been made at a cost by a tenant. He is ejected. The tenant had benefited by the improvement that he effected to some extent by increasing the productivity of the field or in any other way. If he is ejected, the zamindar benefits by it; he lets out the field to the succeeding tenant at a much higher rent. He benefits by the money that was spent by the poor tenant for his own advantage, and now you come forward and say:—"No, this is an injustice, it is inequitable, it is unfair; the zamindar must get the full advantage of the money spent by the tenant and need not give any compensation to the tenant turned out". I think this amendment is against all fairness and all justice and should be rejected without any further contention.

Rai Bahadur Thakur Hanuman Singh : The amendment which has been moved by my honourable friend and colleague Rai Jagdish Prasad Sahib is such as if allowed to become part of the Tenancy Act, will stop all improvements. In the first place, no landlord, however liberal he may be, will give his consent to any tenant to make any improvement on his holding with a view to force him to go to court and get permission therefrom. So that on the occasion of his tenants' ejectment he may not have to pay compensation. It is a well-known fact that agricultural improvement is very necessary for the welfare of the people. If the improvements which can now be made by the poor tenant are stopped, I think our wishes for agricultural improvement and development will not be carried out. As has been remarked by my friend Mr. David, these improvements are always to the advantage of the landlords, because when the tenants are ejected the land passes into the hands of the landlord, and the landlord can let it out at a much higher rental than before. And the compensation which the landlords have to pay to the tenant is paid within a few years or within the first year of the leasing of the land to other tenant and he derives cent. per cent. interest on the

compensation which he pays to the ejected tenant in the shape of enhanced rent. I think my friends the landlords would consider the case of the tenants and also see that agricultural improvement is in no way hampered. Their liberality towards them is to my mind most essential for their own prosperity and for the prosperity of their coming generations.

Maulvi Muhammad Obaid-ur-Rahman Khan: With your permission, Sir, I want to declare that I was not surprised to hear the two speakers who have preceded me. All of us are aware what their inclinations are—how they are dealing with the problem which is now before the House. When the question of the right of the zamindar comes, the honourable member, who has just resumed his seat, is always ready to appeal to our liberality.

Deputy President: I think the honourable member should come to the merits of the discussion.

Maulvi Muhammad Obaid-ur-Rahman Khan: But when the question of the rights of the tenants comes. . . .

Deputy President: The honourable member may now come to the merits of the discussion.

Maulvi Muhammad Obaid-ur-Rahman Khan: I think the amendment which has been moved by the honourable member just on my right is very reasonable and it must receive our support. There is a section which lays down that the zamindar is to give his consent to certain improvements by the tenant, and I hope that the zamindar will be reasonable and liberal enough to give his consent whenever it will be necessary. But in the circumstances in which he thinks that it is unnecessary and he does not like to give consent, then I think it will be too much to force him to pay the compensation for that improvement which has been sanctioned by the court against his wishes. Sir, I do not find what are the reasons for the arguments which are launched against this amendment and how they are judged. Everyone of us has a right to have his say and those honourable members who have opposed this amendment have opposed it only because they are totally opposed to any right of the zamindar and, therefore, they do not want to give the zamindar even his just right. I hope that the House will not show the attitude in the way in which these speakers have shown, but they will consider it very calmly and patiently and at the same time will give their whole-hearted support to the reasonable amendment which is now before the House.

Babu Nemi Saran: I move that the question be now put.

Question that the question be now put, put and agreed to.

Rai Lala Jagdish Prasad Sahib: I consider that the zamindar or the proprietor of the land should have the right to decide whether he wants certain improvements to be effected on his land or not. We have already provided that the tenant can make certain improvements with the consent of the zamindar, and my amendment does not at all affect such improvements. I therefore do not see the logic of saying that if my amendment is carried no improvement will be made. My amendment only refers to those improvements which are carried out by the tenant against the wishes of the landlord and with the permission of the court. As was pointed out by my friend Khan Bahadur Hafiz Hidayat

[Rai Jagdish Prasad Sahib,]

Husain, I think it is but fair that the tenants should have the right of benefit of such improvements as long as they are in possession of the holding and when they evacuate the holding the zamindar should not be saddled with the burden of having to pay compensation in respect of such improvements. I therefore think, Sir, that my amendment is not unreasonable.

Hon'ble Sir Sam O'Donnell : Khan Bahadur Hafiz Hidayat Husain seems to be under the impression that the court will automatically grant permission to the tenant to make the improvement when the tenant applies for such permission. Of course that is not the case. The tenant will have to satisfy the court that permission has been refused without just cause. Unless he so satisfies the court, the court will not grant permission; the court will dismiss his application with costs. The whole point is in fact that the refusal of the landlord has been unreasonable. It is only in such cases that the clause applies. It is only in the case in which the landlord without any good cause has obstinately or maliciously refused to give permission that the court will grant permission to the tenant to make the improvement and that the tenant will be able to claim compensation. In such a case there is no reason why the tenant should not be able to claim compensation. He has already been compelled by the unreasonable attitude of the landlord to go to the court. Why should he be placed at a further disadvantage?

Question put that the following proviso be added to clause 116 :—

"Provided that no tenant shall be entitled to claim compensation at the time of his eviction from the holding in respect of an improvement made by him under section 114 with the permission of the court and without the landholders written consent."

The House divided : Ayes 19 ; Noes 35.

Ayes.

Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Sahib Kunwar Sardar Singh.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.

Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Baiyid Muhammad Ashiq Husain.
Khan Bahadur Munshi Siddiq Ahmad.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Dr. Ganesh Prasad.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.

Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. O. Desanges.
Mr. H. David.
Babu Narayan Prasad Arora

Noss.

Babu Mohan Lal Saksena.
 Babu Bhagwati Sawai Bedar.
 Pandit Nana Chand.
 Thakur Shiva Narayan Singh.
 Babu Nemi Saran.
 Chaudhri Badan Singh.
 Thakur Sadho Singh.

Pandit Sri Kishna Dutt Paliwal.
 Babu Parsidh Narayan Anad.
 Rai Bahadur Thakur Hanuman Singh.
 Mr. Mukandi Lal.
 Khan Bahadur Mr. Asbiq Husain Mirsa.
 Mr. E. M. Souter.
 Mr. Tracey Gavin Jones.

Question, that clause 116, as amended, stand part, put and agreed to.

CLAUSES 117 AND 118.

Question, that clauses 117 and 118 stand part of the Bill, put and agreed to.

CLAUSE 119.

(1) When compensation is found to be payable to the tenant under section 78, the landholder may apply to the court to be allowed to give, in lieu of the sum payable or in lieu of part thereof, a beneficial lease of the holding, or of some other holding, or to make compensation in some other manner.

(2) If the tenant agrees to accept such beneficial lease or other form of compensation, the decree or order under section 78 shall be modified accordingly.

(3) If the tenant refuses to accept a beneficial lease, and if the court, after examining the tenant and making such further inquiry as it may deem necessary, is of opinion that the lease is suited to the circumstances of the tenant, and will adequately compensate the tenant for the improvement in respect of the whole or part of the compensation decreed as the court may determine, and that the tenant has no valid reason for refusing to accept the lease, the court shall allow the tenant one month within which to come to terms with the landholder, and if within that time or within such further time (if any) as the court may think fit to allow, the tenant accepts the lease, and such acceptance is certified by him to the court, the court shall proceed as provided in sub-section (2);

and if the tenant does not accept the lease within such time, he shall forfeit his right to so much of the compensation payable as would have been covered by the beneficial lease.

(4) No compensation other than a beneficial lease shall be decreed or ordered in lieu of money, except with the consent of the tenant.

(5) Every application under sub-section (1) shall be made within one month from the date of the decree or order under section 78.

Rai Bahadur Thakur Hanuman Singh: I move that from paragraph 2 the following words be omitted :—

“He shall.....beneficial lease” and the following be added after the word “time” in line 2:—

“The court shall execute the decree or order under clause 78 for the compensation passed by it against the landholder.”

Sir, the clause as it stands has the effect of forcing a tenant to execute a beneficial lease against his will. This is very unfair and unjust. Supposing a tenant has been ejected from his holding of twenty *bighas* and the amount of compensation awarded to him is something which

[Rai Bahadur Thakur Hanuman Singh.]

the landlord cannot pay without executing a beneficial lease in favour of the tenant and that beneficial lease is only for three *bighas*, the cultivation of those three *bighas* will not be sufficient for the livelihood of the tenant. After ejectment it is quite possible that the tenant may not find any other land to cultivate and on that account he may have to leave the village in search of some other occupation or employment somewhere, but if he will accept this beneficial lease, then in that case he will be obliged to live in the village, otherwise he will lose the land which he will get under the beneficial lease because he will have to sub-let it. So his difficulties will be limitless. For these reasons I hope that my amendment will be accepted by this honourable House so that no tenant be put to the difficulty of accepting a beneficial lease, whether he wishes it or not.

(At this stage the Hon'ble the President resumed the Chair).

Hon'ble Sir Sam O'Donnell : This provision in the Bill reproduces section 93 of Act II of 1901 and as there is not a single recorded ruling on section 93 of the present Act, I think it may be taken that that section has worked well. Now, Sir, what this clause lays down is that on compensation being found payable to the tenant who is liable to ejectment the landlord may offer a beneficial lease to the tenant in lieu of the compensation and if the tenant unreasonably refuses the lease, he forfeits the compensation. That seems to me to be a perfectly reasonable provision. It is intended to meet the case of a landlord who has not got the ready cash available with which to compensate the tenant. If that is the position of the landlord, then under this clause we propose to allow him the option of offering a beneficial lease. The honourable mover says that the beneficial lease may not be an adequate substitute for the compensation. He says that possibly the landlord might offer the tenant a beneficial lease of three *bighas* and that the tenant might not be able to live on three *bighas* and might have to leave the village. What he has omitted to notice is that it will be the court which will decide whether the beneficial lease is such that tenant ought to accept it or not. Sub-clause (3) says:—

“If the tenant refuses to accept a beneficial lease, and if the court, after examining the tenant and making such further inquiry as it may deem necessary, is of opinion that the lease is suited to the circumstances of the tenant, and will adequately compensate the tenant for the improvement in respect of the whole or part of the compensation decreed as the court may determine, and that the tenant has no valid reason for refusing to accept the lease, the court shall allow the tenant one month within which to come to terms with the landholder, and if within that time or within such further time (if any) as the court may think fit to allow, the tenant accepts the lease, etc., etc., etc.”

Therefore it is quite clear that we have made provision for the very contingency on which the honourable mover bases his whole case.

Rai Bahadur Thakur Hanuman Singh : I have heard the Hon'ble the Finance Member but I am not convinced that the beneficial lease will always be to the advantage of the tenant in whose favour it will

be executed by the landlord who will not be in a position to pay the compensation awarded against him. Tenants always like to have more and more land. If the lease would be advantageous to them, there would be no objection on their part, but there might be very strong reasons for their refusal to accept the lease. In that case they should not be forced to have that lease and not the compensation. Tenants are always at liberty to relinquish their holding, but this section has the effect of forcing them to accept a holding which they do not want. I fail to realize, Sir, the justice of this part of section 3.

Hon'ble Sir Sam O'Donnell : I have nothing more to add.

Question, that the following words stand part of clause 119(3), put and agreed to :—

"he shall forfeit his right to so much of the compensation payable as would have been covered by the beneficial lease."

Amendment declared lost.

Question, that clause 119 stand part of the Bill, put and agreed to.

CLAUSE 120.

Disputes as to right to make improvements, etc. (1) If a question arises between a tenant and his landholder—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement, or

(c) as to the amount of compensation or abatement of rent due under sub-section (3) or sub-section (4) of section 115,

the assistant collector in charge of the sub-division may, on the application of either party, decide the question.

(2) The decision of the assistant collector on questions arising under clauses (a) and (b) of sub-section (1) shall be final.

In question arising under clause (c) an appeal shall lie from his decision to the collector.

Mr. Mukandi Lal : I move that the word "may" be replaced by "shall" in line 9 of sub-clause (1) (c). I think this is only a verbal change but I think that without substituting "shall" for "may" it would be optional for the court to give decision or not. I think that it was not the intention of the draftsmen of the Bill and I therefore hope that this amendment will be accepted by the House.

Hon'ble Sir Sam O'Donnell : I am happy to be able to accept this particular amendment.

Question, that the word "may" stand part of sub-clause (1) (c) put and negatived.

Question, that the word "shall" be inserted there put and agreed to.

Babu Nemi Saran : I move that for the whole sub-clause (2) of clause 120 the following be substituted.

"In questions arising under clause (1) an appeal shall lie from the assistant collector's decision to the collector."

Babu Nemi Saran.]

In moving this amendment my intention is to make the order of the assistant collector under this clause appealable to the collector. As a matter of instance I may quote from what Khan Bahadur Hafiz Hidayat Husain has just said in one of his previous remarks that as regards the question whether a building is of a permanent character or not, there has been a ruling of the High Court that even a thatched building is of permanent character. And in reply to that, the Hon'ble the Finance Member, as far as I remember, said, that revenue courts would interpret it according to common sense. We know, Sir, that common sense differs with different courts, as has always been the experience of lawyers who have been arguing cases in courts of appeal. I think that the question of improvement is a very important question and the sections under this chapter are liable to be interpreted in more ways than one. As you see, this clause 120, gives the assistant collector power to hear and decide questions regarding the right to make an improvement. But as far as I think it is a very material question; the question whether a certain thing is an improvement or not is not one which should be left to the entire will and the final decision of the assistant collector. Under the new Act tenants may desire to make more use of this section than they have done so far, and I think many cases will arise and many discontented parties would like to go to higher authorities for decision. I have just quoted one example in which decisions can be challenged and rightly challenged, and several such other examples can be quoted. There should be one appeal from the order of the assistant collector to the collector.

Hon'ble Sir Sam O'Donnell : If honourable members will refer to section 94 of the present Tenancy Act they will find the following provision :—

“ If a question arises between a tenant and his landholder—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement, the assistant collector in charge of the sub-division may, on the application of either party, decide the question, and his decision shall be final.”

Therefore, we are merely reproducing the provisions of the existing Act so far as 120 (1) (a) and (b) are concerned : we are allowing an appeal in cases under section 120 (1) (c). The honourable member has said that if the clause is passed in the form in which it now stands there will be many discontented persons who will go to courts, or rather I should have said many persons will be discontented if they cannot carry their cases further. As a matter of fact, I believe that the number of cases under section 94 is extremely small. Mr. Burn tells me—Mr. Burn, it will be admitted, is an authority in these matters—that no such cases have ever come before him. Therefore, I think, we may take it that the existing provision is working very well. That being so, I see no reason why we should make any alteration in this clause. After all, it is very desirable that simple questions like these should be decided promptly and without delay. That is in the interests not only of the tenants but of the landlords as well.

Babu Nemi Saran: I still feel that the reasonableness of my amendment has not been challenged by the Hon'ble the Finance Member by only saying that the existing provision is embodied in this section. As far as the existing law is concerned, I may say that the conditions are changing very rapidly. We know that the tenants as well as the zamindars are now much more attached to their rights than before, and they are likely to take greater interest in the agricultural development of the future as may be forecasted by the coming Royal Commission. I think the question of improvement would form a very great problem in the future development of agriculture. We also know, Sir, that there has been a very great departure regarding the right of making improvements from the old law. Formerly no such right was allowed to a tenant to go to a court of law if he wanted to make an improvement and was not allowed by the zamindar himself to do so. Similarly a zamindar can go to a court of law and say that he should be allowed to make an improvement without the tenants consent. Therefore, I think, under the changed circumstances and also under the changed conditions of the present Act it is necessary that we should have a more elaborate machinery to decide this question than we had before in the existing law. One more point which I wish to say in this connexion is that the instance which has been quoted by me as an example for the consideration of the Hon'ble the Finance Member remains unreplyed. Suppose this question comes before the court of an assistant collector. The question for decision is whether the building is permanent or not. I think, Sir, it is a very important question which may interfere with the rights of one party or the other. As we see, there are conflicting decisions by civil courts on this point who have greater experience of these things and the High Court had to decide one way or the other. Now, we leave it finally in the hands of the assistant collector who does not possess so much experience in this matter. I think, therefore, that my amendment should be accepted by the Government.

Hon'ble Sir Sam O'Donnell: The honourable mover argues that, although there may be few or no cases under the existing law, conditions are now changing rapidly and such cases are likely to be instituted in larger numbers in future. I do not agree with that. It must be remembered that the most common and by far the most important improvement is a well and statutory and occupancy tenants will be entitled to make wells without the consent of the landlord.

The honourable mover has also referred to the question of permanent buildings. There again, it seems to me, that such cases will be extremely rare. If they do occur, I at least, have full confidence that the assistant collectors will decide them on broad common sense lines.

Question, that sub-clause (2), as reported by the select committee stand part of clause 120, put and agreed to.

Amendment declared lost.

Question, that clause 120, as amended, stand part of the Bill, put and agreed to.

CLAUSE 121.

Question, that clause 121 stand part of the Bill, put and agreed to.

CLAUSE 122.

In case of doubt of dispute as to who is the tenant of a holding the landholder may sue the persons as to whose right such doubt exists or between whom such dispute has arisen, to have it declared which of such persons is the tenant.

Suit by landholder for declaration as to who is tenant.

Pandit Nanak Chand: I move that in line 2 after "holding" insert "by succession or otherwise" and for the words "may sue" in line 3 the following be substituted:—"shall in a case for correction of papers be directed to sue within one month".

The object of this amendment is clear. At present very important questions of succession to tenancies are decided in a summary fashion on a mere application for correction of papers. Sometimes there are disputes as to who should succeed a deceased tenant, or who of the rival claimants should hold the land which has been given to them by the landlords in a joint mahal. The object of this amendment is that where such disputes arise, particularly in connexion with the proceedings for the correction of papers, the court should direct the landholder to get this matter decided by filing a suit within one month, otherwise such important questions as of succession to tenancies will continue to be disposed of in a summary method, and will not be decided with that care and attention which is given to suits, where issues are framed and the procedure relating to suits is followed.

Hon'ble Sir Sam O'Donnell: I think that this amendment would introduce restrictions which are unnecessary and undesirable. The clause as framed in the Bill provides for the decision of cases where the right of tenancy is in dispute, howsoever the dispute may have arisen. The disputes will not necessarily be limited to succession. There may be other grounds of dispute besides succession. Similarly, the second part of the amendment would limit the landholders' right to sue to cases where there has been an application for a correction of papers. Why should the right be limited in that way? What we want is a clause which will enable either the landholder or the tenant to sue for a declaration in any case in which a dispute has arisen.

Khan Bahadur Hafiz Eidayat Hussain: May I just point out in addition to what the Hon'ble the Finance Member has said that if we accept this amendment we would be engrafting the provisions of the Land Revenue Act in this Bill. Correction of papers is provided for in sections 39 and 42 of the Land Revenue Act. Section 39 provides for a summary remedy while suit is provided in section 42. But both of these sections leave the aggrieved party option to go to the civil court for a final adjudication of his remedies. This amendment, if accepted, would curtail that right and, therefore, I oppose it.

Amendment, by leave, withdrawn.

Question, that clause 122 stand part of the Bill, put and agreed to.

CLAUSES 123 AND 124.

Question, that clauses 123 and 124 stand part of the Bill, put and agreed to.

CLAUSE 125.

(1) Any tenant is entitled to receive a written lease from his landholder, and a landholder, upon delivering or tendering to a tenant a lease consistent with the provisions of this Act, is entitled to receive from him a counterpart thereof.

(2) It shall be sufficient if such lease or counterpart contains, in addition to the name and description of the tenant, the particulars specified in section 123.

(3) Such lease or counterpart may be in the form given in the Third schedule.

(4) No omission in any such lease of any covenants or conditions, not inconsistent with any of the particulars above specified, shall prevent either of the parties thereto from claiming the benefit of such covenants or conditions.

Nandit Nanak Chand : I beg to move that sub-clause (4) of clause 125 be deleted.

The sub-clause reads: "No omission in any such lease of any covenants or conditions, not inconsistent with any of the particulars above specified, shall prevent either of the parties thereto from claiming the benefit of such covenants or conditions".

The sub-clause, if retained, will lead to unnecessary litigation among the tenants and the zamindars. A zamindar or a tenant might contend that in addition to the conditions which have been written in the lease, a condition, not inconsistent with any of the provisions of the Act, was also agreed to, but was not reduced to writing and he might put forward a claim to the benefit of such a condition. I think that when a document like a lease is reduced to writing, it should include all conditions which have been agreed upon between the parties and are not inconsistent with this Act, so that it may not be open to either the tenants on one side, or the zamindars on the other, to come forward and say that there were certain other conditions which were agreed upon at the time the lease was executed, but were not reduced to writing. If this is not done, it will encourage the parties either to leave out certain conditions or to set up some more conditions and to bring forward oral evidence to support their respective contentions. Besides, this provision is in contravention of the provisions of sections 91 and 92 of the Indian Evidence Act also. For these reasons I hope that amendment will receive the support of my honourable colleagues in the Council.

Hon'ble Sir Sam O'Donnell : The honourable mover who has moved this amendment, has omitted to mention that the clause in the Bill merely reproduces a provision in the existing law, which has worked quite satisfactorily and has given no trouble whatsoever. He seems to think that it will be in the interests of the tenant if this sub-clause is omitted. As a matter of fact, the result would be just the reverse. There may be covenants between the parties which may not be in the lease and the tenant, who is usually illiterate, may be unaware of the omission. In these circumstances it is unreasonable to refuse to allow the tenant to prove that there was such a covenant. The honourable mover seems to assume that the ordinary tenant is as familiar with documents and contracts as is the merchant or the money-lender. That is not so. I submit that we had much better stick to a provision which has been part of the law for 25 years and which has given rise to no sort of trouble.

Rao Sahib Abdul Hameed Khan :

جناب والا —

اس وقت جو ترمیم میرے آئریبل دوست پنڈت نانک چند صاحب نے پیش کی ہے اس سے مجھے اختلاف ہی اور وجہ اختلاف کی صرف اس قدر ہے کہ جو تقریر آپ نے فرمائی اور جو وجہ آپ نے ان الفاظ کے مسودہ سے خارج کرانے کے لیے ارشاد فرمائی ہے وہ صرف یہ ہے کہ اس کے رہنے سے مقدمات میں زیادتی ہوگی — مقدمہ بازی اور زیادہ بڑھ جائیگی — مجھے یہ عرض کرنا ہی کہ ہر ایک انجمن اور ہر سوسائٹی یا جماعت میں کچھ قوانین رٹن (written) یعنی ضبط تحریر میں آئے ہوئے ہوتے ہیں اور کچھ قوانین unwritten یعنی غیر تحریر شدہ ہوتے ہیں اسی طرح اس بل کے کچھ ضبط تحریر میں آئے ہوئے مقاصد ہیں اور کچھ غیر تحریر شدہ — جیسا کہ میں پہلے بھی عرض کر چکا ہوں — اس بل کا لفظ لفظ زبان حال اسے یہ بتلاتا ہے کہ اس کے مصنفین کا غیر تحریر شدہ مقصد یا اضافہ مقدمہ بازی بھی ہے اس لیے ہمیں سمجھدار آدمی کی طرح حتی الامکان کوئی ترمیم اس قسم کی پیش نہیں کرنا چاہیئے جس سے اس بل کے کسی مقصد کے فوت ہونے کا احتمال یا امکان ہو — میں پنڈت جی کی ترمیم سے اختلاف کرنا ہوں اس لیے کہ اس بل کا ہوا مقصد یعنی مقدمہ بازی کا اضافہ اس ترمیم کے منظور ہوجانے سے اگر فوت ہو گیا تو اس کے مصنفین کی محنت بیکار ہو جائیگی — (تہقہہ) *

Question that clause 125(4) stand part of the Bill, put and agreed to.

Question that clause 125 stand part of the Bill put and agreed to.

CLAUSE 126.

Lease for period exceeding five years to be in writing.

A lease for a period exceeding five years shall be made by an instrument in writing.

Khan Bahadur Hafiz Hidayat Hussain : I beg to move that clause 123 be deleted, and the following substituted instead :—

“A lease for a period exceeding one year or reserving a yearly rent shall be made by an instrument in writing.

All other leases may be made either by an instrument in writing, or by oral agreement accompanied by delivery of possession.”

My object in moving this amendment is to bring the law into line with the Transfer of Property Act, which provides how leases ought to be made. Section 107 of that Act embodies that procedure and my amendment aims at that procedure for agricultural leases as well. According to section 107 of the Transfer of Property Act all leases beyond one year have to be reduced to writing, and unless and until this formality is observed, it will not only be inconsistent with the provisions of that section, but will leave the way open for a good deal of perjury on either side on the issue of the period of the lease, and the aim of every law, much more so of the agrarian law, ought to be to curtail the opportunities of litigation. I have also considered whether my amendment would offend any of the sections that have so far

been passed. Now the most important sections relevant to my amendment are sections 29 and 107 of this Bill. The provisions of section 107 and 29 do not stand in the way of my amendment, the result of the adoption of which would be that leases that are reduced into writing will be liable either to attestation in lieu of registration or registration as provided in section 107 of the Transfer of Property Act. I, therefore, hope that my amendment will be carried.

Mr. R. Burn : The first change which the honourable member wishes to make is that instead of reading in the Bill that "a lease for a period exceeding five years shall be made by an instrument in writing," he would have "A lease for a period exceeding one year or reserving a yearly rent shall be made by an instrument in writing."

The period of five years has been taken because the local Government, ever since 1885 in accordance with section 17 of the Registration Act, have exempted from registration any agricultural lease up to five years. That is the object of having a five-year period. Five years was fixed because leases which are for a term longer than five years have to be registered and it is, of course, essential that such a lease must be in writing.

The second part of his amendment is evidently made with reference to the provisions of the Transfer of Property Act. But I would call the attention of the House to section 117 of the Act, which lays down that the provisions of Chapter V of the Transfer of Property Act apply to leases for agricultural purposes, except when the local Government has made a notification declaring that all or any of the provisions are to apply. No such notification has been made in these provinces and, therefore, it seems to me that neither of these suggestions should be adopted by the Council.

Khan Bahadur Hafiz Hidayat Husain : The points urged by the Hon'ble the Senior Member of the Board of Revenue are beside the mark. What I am insisting upon is writing for a period between one and five years and registration not necessarily under the Indian Registration Act. This will obviate several difficulties that may arise hereafter. A tenant may say I have got this land for three or four years, the landlord might say it is only for two or even one year. But if the contract is reduced into writing both the landlord and the tenant will be safe. Therefore, I think that every lease which exceeds one year should be in writing in order to obviate any dispute that might subsequently arise between the landlord and the tenant.

Hon'ble Sir Sam O'Donnell : I think it is improbable that the number of leases concerned, when this Bill becomes law, will be very large, because all the present non-occupancy tenants will become statutory tenants. Apart from that, all leases are executed in villages, and it seems to me undesirable to insist that they should necessarily be in writing. The result might be to invalidate quite a large number of contracts that have been entered in good faith. I am, therefore, in favour of the present provision.

Question, that clause 126 as reported by the select committee stand part of the Bill, put and agreed to.

Hon'ble Sir Sam O'Donnell: The honourable member is under the impression that this is quite a new provision. As a matter of fact, it goes back to Act X of 1859. It has been part of the law for three-quarters of a century, and I have never heard that it has given the slightest trouble to anyone. I oppose this amendment.

Mr. Mukandi Lal: There are so many good and bad laws which have been going on from time immemorial, but if we live in better times we can improve upon them. The Hon'ble the Finance Member said the other day that the crux of the whole aim of the Bill was that the zamindars were going to lose a good deal of power; well if they lose power in one hand they can exercise the power by other means.

Question, that the above words be added to clause 128, put and negatived.

Question, that clause 128 stand part of the Bill, put and agreed to.

CLAUSE 129.

The rent of a tenant shall be payable in the following instalments and at the following dates:—

Instalments of rent.

- (a) if the instalments and dates have been agreed on by the parties to the tenancy, the instalments and dates so agreed on;
- (b) if the instalments and dates have been determined and recorded by a settlement officer, the instalments and dates so determined and recorded;
- (c) in other cases for permanent tenure-holders and tenants with a right of occupancy twenty-one days before the dates appointed for the payment of the instalments of land revenue of the mahal; and for all other tenants thirty days before the dates so appointed.

Hon'ble Sir Sam O'Donnell: This is really a formal amendment in order to make the clause quite clear. Under section 99 of the present Tenancy Act. The amendment I have to move runs thus:—

“That at the beginning of sub-clause (b) be added the words “in the absence of any such agreement”.

Under section 99 of the present Tenancy Act the rent of a tenant is payable in instalments according to agreement. When there is no such agreement in existence, then on such dates as may be prescribed by the local Government. Clause 129 provides that the rent of a tenant shall be payable in the following instalments and at the following dates:—

- (a) on the dates agreed on by the parties,
- (b) on the dates determined and recorded by the settlement officer, and

sub-clause (c) in other cases lays down a special rule. There is nothing however in the clause to show what is to happen if the instalments and dates have been agreed upon and have also been determined and recorded by the settlement officer. I want to make it clear that in such a contingency the instalments and dates should be those agreed

upon by the parties and the instalments and dates determined and recorded by the settlement officer should have force only where no agreement exists.

Question, that the above words be added to clause 129(b), put and agreed to.

Question, that clause 129, as amended, stand part of the Bill, put and agreed to.

CLAUSES 130 AND 131.

Question, that clauses 130 and 131 stand part of the Bill, put and agreed to.

CLAUSE 132.

Pandit Nanak Chand: I propose that this clause may stand over until we have considered the chapter on distraint.

Hon'ble the President: What is the idea of that?

Pandit Nanak Chand: There are amendments to the effect that the chapter on distraint should be deleted.

Hon'ble the President: I think that consequential amendments will be moved afterwards if the chapter on distraint is deleted. Is there no amendment to clause 132?

Question, that clause 132 stand part of the Bill, put and agreed to.

CLAUSES 133, 134 AND 135.

Question, that clauses 133, 134 and 135 stand part of the Bill, put and agreed to.

CLAUSE 136.

Any person to whom any sum is due from any tenant on account of canal dues under section 47 of the Northern India Canal and Drainage Act, 1873, may sue for the same under section 132 as if it were an arrear of rent, and where such suit is brought by a person entitled to realize rent from such tenant, any decree on account of canal dues under this section shall be deemed to be a decree for arrears of rent for the purpose of section 79 of this Act.

Khan Bahadur Mr. Muhammad Aslam Saifi: I beg to move that for the words "may sue for the same under section 132" the words "may realize the dues under any of the processes mentioned in section 132" be substituted.

Sir, the Government in section 132 have provided certain processes according to which arrears of rent could be realized by the zamindar, but with regard to the canal dues he is required to sue the tenant for the amount that is due to him. That is a very expensive process, because he has got to go to the court for the amount that is due against the tenant. I think it is quite consistent with the policy of this Bill that the zamindar should be given the facility of realizing the canal dues from the tenant in the same way in which he can realize the arrears of rent. The object is to simplify the realization of rent as well as the canal dues. That will also avoid litigation.

Hon'ble Sir Sam O'Donnell: I think, it is quite reasonable that the lambardar should be given facilities for collecting the dues due to him. He has to pay the canal dues, and if he is not able to recover the amount from the tenants of the land for some time, then he is put to a pecuniary loss which may be very substantial. I think that clause 136, as drafted, is not a very happy production, and so far as I understand the amendment of the honourable mover, I agree with him in principle. But, I think, that the position can be stated in a somewhat different and more satisfactory way, and I beg to propose the following amendment to the amendment that has been moved.

I beg to move that the following clause be substituted for the present clause :—

“ Any person to whom any sum is due from any tenant on account of canal dues under section 47 of the Northern India Canal and Drainage Act, 1873, shall, in respect thereof, have all the legal remedies provided in this Act, as if such sum were an arrear of rent, and where the land for which the sum is due, is sub-let, he shall have those remedies against the tenant and sub-tenant jointly.”

I think that meets the point of the honourable mover and gives the lambardar all that he can claim.

Hon'ble the President: The original amendment before the House was that for the words “ may sue for the same under section 132 ” the words “ may realize the dues under any of the processes mentioned in section 132 ” be substituted, since when an amendment has been proposed by the Hon'ble the Finance Member. Is there any objection to this new amendment?

There was no objection.

Hon'ble the President: The amendment is that for the words “ may sue for the same under section 132 as if it were an arrear of rent, and where such suit is brought by a person entitled to realize rent from such tenant, any decree on account of canal dues under this section shall be deemed to be a decree for arrears of rent for the purpose of section 79 of this Act ” the following be substituted :—

“ shall in respect thereof have all the legal remedies provided in this Act as if such sum were an arrear of rent and where the land for which the sum is due is sub-let, he shall have those remedies against the tenant and sub-tenant jointly.”

Khan Bahadur Mr. Muhammad Aslam Saifi: I beg leave to withdraw my amendment.

Amendment by leave withdrawn.

Hon'ble the President: The Hon'ble the Finance Member's amendment is before the House now.

Hon'ble Sir Sam O'Donnell: In lines 1 and 2 the words “ from any tenant ” should also go out.

Hon'ble the President: Is there any objection to this further amendment?

There was no objection.

Hon'ble the President : Since then a further amendment has been moved that the words "from any tenant" be taken out, so that the amended clause would run like this :—

"Any person to whom any sum is due on account of canal dues under section 47 of the Northern India Canal and Drainage Act, 1873, shall in respect thereof have all the legal remedies provided in this Act as if such sum were an arrear of rent and where the land for which the sum is due is sub-let, he shall have those remedies against the tenant and sub-tenant jointly."

Babu Nemi Saran : In this connexion I want to know the reason for the omission of the words "from any tenant," for, as far as I think, the canal dues are realizable either from a tenant or from an adjacent zamindar or from a person who is not a tenant but only a sub-tenant. These three cases arise under it. In the case of a zamindar I think no provision is to be found in this Bill by which he can realize those dues. Secondly, with regard to a tenant who is not a tenant of the zamindar this Bill does not provide how the zamindar has got to proceed, and therefore the only position can be that it should be from a tenant of his own zamindari.

Hon'ble Sir Sam O'Donnell : The reason for striking out these words was to make it quite clear that these provisions apply also to the sub-tenants, since under the Canal Act the dues are realizable both from the tenant and from the sub-tenant. That was the reason for omitting these words.

Babu Nemi Saran : What about my second point ?

Hon'ble Sir Sam O'Donnell : I do not quite follow that. We simply place the lambardar in the same position as if the sum were due to him as an arrear of rent, and the other provisions of the Act apply.

Hon'ble the President : The amendment moved is that the words "from any tenant" be deleted from clause 136.

Question, that the words "from any tenant" stand part of the clause put and negatived.

Hon'ble the President : The question is that for the words "may sue for the same under section 132 as if it were in arrear of rent, and where such suit is brought by a person entitled to realize rent from such tenant, any decree on account of canal dues under this section shall be deemed to be a decree for arrears of rent for the purpose of section 79 of this Act" the following be substituted :—

"shall in respect thereof have all the legal remedies provided in this Act as if such sum were an arrear of rent, and where the land for which the sum is due is sub-let, he shall have those remedies against the tenant and sub-tenant jointly."

Question, that the words "as reported by the Select Committee" stand part, put and negatived.

Question, that the above words be inserted there, put and agreed to.

Question, that clause 136, as amended, stand part of the Bill, put and agreed to.

CLAUSES 137 AND 138.

Question, that clauses 137 and 138 stand part, put and agreed to.

CLAUSE 139.

Question, that clause 139 stand part, put and agreed to

NEW CLAUSE.

Rai Bahadur Thakur Hanuman Singh: I move that the following be added as clause 139A:—

“139A. When rent is taken by estimates or appraisement of the standing crop or of produce of fruit trees and such estimate or appraisement is made by the landholder and tenant amicably or by experts appointed by them, the total estimated produce, landholder's share and its price as well as particulars of the produce and land should be entered in a statement to be signed by the experts and the parties in case of their agreement which should be made over to the patwari who will keep it for three years and acknowledge its receipt in writing.”

On account of these appraisements various sort of cases crop up between the landlords and tenants and both of them have to waste their money and time in litigation. The chief reason is that when appraisements are made no record is maintained either by the landlord or by the tenant, and even where it is maintained, when a case is filed, if it is to their disadvantage it is destroyed. With a view to prevent this litigation and with a view to facilitate justice both to the landlords and tenants I would suggest that if a statement of an appraisement is maintained with the patwari I think a good deal of litigation would be avoided.

With these few remarks I place my amendment before the House.

Hon'ble Sir Sam O'Donnell: I am entirely unable to understand in what way this amendment, if accepted, would have the effects which the honourable member desires. If the parties are agreed as regards the division or appraisement, then what is the necessity for all these records? If the parties do not agree, then the provisions of sections 138 and 139 apply and there will be a reference to an impartial arbitrator.

Rai Bahadur Thakur Hanuman Singh: The parties do agree at the time when the appraisement is made, but afterwards when the time for realization comes the tenant says that no such appraisement was made, and if they disagree it will give rise to litigation and the landlord has to go to court. If the statement happens to be in the possession of the tenant, he refuses to produce it; if the statement happens to be in the possession of an expert and if that expert happens to be a friend of the tenant, he also refuses to produce it before the court. In this way tenants as well as landlords have to litigate and spend money. Anyone who has experience of this litigation will bear me out when I say that where such appraisements are made by experts the litigation is not small.

Hon'ble Sir Sam O'Donnell: If the parties wish to get a record of the transaction they can do so; there is nothing to prevent them from doing so. The honourable member says that the parties shall record what they have agreed upon. He does not say what will happen if they fail to do so.

Question, that this new clause be added, put and negatived.

CLAUSE 140.

(1) Every tenant who makes a payment on account of rent to his landholder shall be entitled to obtain forthwith receipt for rent. from the landholder a written receipt for the amount so paid signed by the landholder.

(2) The landholder shall prepare and retain a counterfoil or copy of the receipt.

Bhaya Hanumat Frasad Singh : I have got an amendment in regard to sub-clause (2). I rise to move that the words " or by a man authorized on his behalf to collect the rent " be added after the word " landholder " in line 5 of sub-clause (2) of clause 140.

Sir, there are landlords who do not receive their rents personally. They have got ziladars or tahsildars who collect rents and issue receipts to the tenants. The language of section 140 says that the landholder shall have to issue a receipt to the tenant personally. It would be very difficult for the big landlords to issue receipts personally. The amendment before the House is a very innocent and modest one. I hope the House will accept it.

Hon'ble Sir Sam O'Donnell : The honourable member has overlooked clause 9 of the Bill. Clause 9 provides that anything which is by this Bill done by a landholder may be done by an agent of the landholder authorized by him in this behalf. The amendment is therefore unnecessary. The receipt given by an authorized agent of a landholder is just as good as the receipt given by the landholder himself.

Bhaya Hanumat Prasad Singh : I withdraw the amendment.

Amendment by leave withdrawn.

Pandit Nanak Chand : I move that the following be substituted for sub-clause (2) of clause 140 :—

" (2) No landholder shall receive rent without issuing a written receipt for the same and without obtaining the signature of the payer on the counterfoil or copy of the receipt."

I find that sub-clause (1) provides that every tenant who makes a payment on account of rent to his landholder shall be entitled to obtain from the landholder a written receipt for the amount so paid signed by the landholder. Now, the landholder is expected to grant a receipt and the tenant is entitled to receive a receipt. But in spite of a similar provision in Act II of 1901 we find that there are a number of cases in which when the zamindar comes forward with a suit for arrears of rent the tenant comes forward with the plea of having paid the rent due to the landlord either in full or in part. The courts have to frame issues and take evidence, which is generally oral, on these points both on behalf of the tenants and on behalf of the landlords. We know, Sir, that the tenants are usually illiterate and ignorant of their rights. Very often it happens that on account of some reason or other the zamindar or his *karinda* fails to give the receipt and promises to give it later on. Sometimes he forgets to give the receipt and sometimes for some reason or other he decides not to give a receipt for rent realized. The tenant all the time does not apprehend that the zamindar will file a suit for arrears of rent. He sleeps over it and does not care to go to court for this ordinary default on behalf of the zamindar or his agent. When after a lapse of some time a suit for arrears

[Pandit Nanak Chand.]

of rent is filed, he comes forward with this plea. Sometimes it also happens that this plea on behalf of the tenant is advanced to gain time or to put the zamindar to unnecessary trouble, and to make him bear the cost of unnecessary litigation. What I propose to provide for is that it may be made obligatory for the landlord or his agent to grant a receipt for the rent that he gets from the tenant as well as to obtain the signature of the tenant if he is literate, or his thumb-impression if he is illiterate, on the counterfoil or copy of the receipt. If this is done, it will be well-nigh impossible for the tenant to say in court that he has paid the rent, when he has actually not done so. I think it is a very salutary provision and ought to be acceptable to the House. It will put a stop to frivolous objections on the ground of payment of rent without receipts.

Hon'ble Sir Sam O'Donnell : The first part of this amendment merely repeats in different—I was going to say in indifferent—language what clause 140(1) already lays down. That clause says:—"Every tenant who makes a payment on account of rent to his landholder shall be entitled to obtain forthwith from the landholder a written receipt for the amount so paid signed by the landholder." The honourable member would substitute for it the following: "No landholder shall receive rent without issuing a written receipt for the same." I do not see what will be gained by the substitution of his words for the words in the clause. The second part of his amendment says that the landholder must obtain the signature of the payer on the counterfoil or copy of the receipt. It is not stated that the landholder must keep a counterfoil. There is no obligation on him to do so, or if there is one, it is merely implied. Apart from that, I see no advantage whatsoever in requiring the landholder to obtain the signature of the tenant on the counterfoil or copy of the receipt. What the tenant is concerned with is the receipt of the landholder for the rent he pays him. On the other hand, if the landholder wishes to get the signature of the tenant on the counterfoil, he will have no difficulty in doing so. I see, therefore, no advantage in substituting this indifferently drafted amendment for the clause in the Bill.

Pandit Nanak Chand : I do not propose in this amendment to deal with the contents of the receipt or the counterfoil. They are given in clause 141(1). What I here want is to make it obligatory for the zamindar or his agent, who realizes rent for him, in clear terms that he has to grant a receipt and to obtain the signature of the tenant as a proof of the fact that the latter has received the receipt for the amount paid from the zamindar. Sub-clause (1) in the Bill provides that the tenant shall be entitled to obtain a receipt for the amount of rent, but I submit that it does not make it incumbent on the zamindar to grant a receipt to the tenant for the rent he realizes from him. If the tenant on account of his ignorance or his faith in the zamindar or his *karinda* does not insist upon getting a receipt or when a receipt is promised to be given later on but is not so given, the rent will continue to be paid without a receipt in numerous cases, and such cases will lend support to false objections being raised.

Question, that the sub-clause as reported by the Select Committee stand part, put and agreed to. Amendment declared lost.

Question, that clause 140 stand part of the Bill, put and agreed to.

CLAUSE 141.

(1) The receipt and counterfoil or copy shall specify such of the Contents of valid re- following particulars as can be specified by the receipt, land-holder at the time of payment, namely,—

- (a) the names of the payer and payee;
- (b) the name of the village with mahal or patti;
- (c) the amount paid;
- (d) where there is more than one holding an indication of the holding on account of which the rent has been paid;
- (e) the year and instalment to which the payment has been credited;
- (f) whether the payment has been accepted as a payment in full, or only on account; and
- (g) the date on which the rent is paid.

(2) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Pandit Nanak Chand: I move that in clause 141(1)(f) after the word "account" the words "together with the amount of arrears which remained due from the tenant" be inserted. This clause lays down the contents of a receipt. I propose to provide by my amendment that when a tenant makes a payment to the zamindar his account is usually checked and a receipt is granted, that receipt should also specify as to what amount of rent still remains due from the tenant; if this amount is not shown in the receipt, the tenant will not be in an exact position to know as to what amount is still due from him to his landlord. My amendment will enable him to know clearly and definitely as to where he stands, and the zamindar also will take more care in demanding the exact amount of arrears.

Hon'ble Sir Sam O'Donnell: The effect of this amendment will be to convert a receipt into a statement of accounts and to defeat the policy of the Bill which is to encourage the giving of receipts. If a landlord is required every time he receives rent to draw up a full statement of accounts after examining his books for three years past, I think that in a great many cases he will be unwilling to give a receipt. He will say "I will be hanged if I give a receipt."

Question, that in clause 141(1)(f) after the word "account" the words "together with the amount of arrears which remained due from the tenant" be inserted, put and negatived.

Bhaya Hanumat Prasad Singh: I rise to move that sub-clause (2) of clause 141 be deleted. If this clause remains as part of the Bill, it will create great hardship on small landholders, because the majority of them are illiterate and at the same time are not in a position to keep agents to collect rent from the tenants and to issue receipts to them on their behalf. Thus I see that it would be difficult for them to comply with the provisions of this sub-clause. Therefore if this sub-clause is retained, the petty landholders will be put to a great loss, and in a short time they will be ruined. I think, Sir, that a clause like this should not become a part of this Bill. For these reasons I hope the Council will delete sub-clause (2) of clause 141.

Hon'ble Sir Sam O'Donnell: The honourable member supposes that this is a new provision. As a matter of fact there is a similar provision in section 182 of the present Act and an analogous provision will be found in section 48 of Act XII of 1881. There is also a similar provision in section 53(3) and (4) of the Bengal Tenancy Act. This particular provision, therefore, has been in force for several generations. It does not deprive the landlords of the whole of their income. It is always open to the landlord to rebut the presumption.

Question, that sub-clause (2) stand part of the Bill, put and agreed to.

Question, that clause 141 do stand part of the Bill, put and agreed to.

CLAUSE 142.

If a land-holder without reasonable cause refuses to deliver to a tenant a receipt containing the particulars herein before prescribed for any rent paid by him or to credit the rent paid to the year and instalment to which the tenant has requested the payment to be credited, the tenant shall be entitled to recover from him such compensation not exceeding double the amount or value of the rent paid as the court thinks fit to decree.

Suit by tenant for compensation for refusing receipt or wrongly crediting rent.

Pandit Nanak Chani: I propose that the words "without reasonable cause" in line 1 of clause 142 be deleted.

I move the deletion of these words because if these words are left as they are they would lead to litigation. It is conceivable that when a tenant who has paid rent and the zamindar or his agent has not granted a receipt, files a suit for compensation for failure to grant him a receipt, it is proved that the rent was paid and the zamindar did not grant him a receipt for the same, it leaves it open to the zamindar or his agent that it was on account of some one or the other reasonable cause that a receipt, could not be granted and that there was no intention of defrauding the money or extorting the money. This will in most cases lead to avoidable litigation and manufacturing of oral evidence to prove that the failure of receipt was due to some reasonable cause, and if the plea of the zamindar is accepted the poor tenant will have to undergo the trouble of fighting out the case and in some cases to bear all the costs for the same. For this purpose I want to make it clear that the landholder shall in every case grant a receipt, and if he neglects to do so he shall be liable to the provisions of this section. It is no use to provide such loopholes for tenants or zamindars which are sure to encourage avoidable if not altogether frivolous litigation.

Hon'ble Sir Sam O'Donnell: These words "without reasonable cause" will be found in the existing Act, and I think it is quite right that they should be retained. There may be cases in which the landlord may have reasonable cause for refusing to give a receipt. A tenant may turn up at 10 o'clock in the night when the landlord is having his dinner and fling the money down and demand a receipt for the same. The landlord might then quite reasonably refuse to give a receipt. I have seen it stated that at one time in one part of the American Continent the debtor sometimes turned up at 11 o'clock at night with a cart-load of silver and demanded that the creditor should count the money and

give him a receipt immediately. The tenant might attempt something equally irritating.

Question that the words "without reasonable cause" stand part of the clause put and agreed to.

Pandit Nanak Chand: I move that in clause 142 between the words "refuses" and "to deliver" the words "or neglects" be inserted.

The amendment speaks for itself and I have nothing to add.

Hon'ble the President: This is a commendably brief speech.

Hon'ble Sir Sam O'Donnell: I think the amendment does speak for itself and I have no doubt that the Council will reject it.

Question, that the words "or neglects" be added, put and negatived.

Pandit Nanak Chand: I move that the present clause 142 be numbered as 142(1) and the following sub-clause be added:—"(2) Any landholder or his agent against whom it is proved that he refused or neglected to issue a receipt for the rent or canal dues recovered by him shall be presumed to have done so with intent to dishonestly misappropriate the amount so recovered within the meaning of section 403 of the Indian Penal Code."

I know from the reception that has been accorded to this amendment that it will be defeated, but if after all these safeguards, precautions, and conditions that have been incorporated in clause 142 he fails to grant a receipt, why should not there be a presumption against him as I have proposed. It is provided in this Bill that if a landholder without reasonable cause refuses or neglects to deliver to a tenant a receipt he will be liable to compensation, and further if the zamindar can prove to the satisfaction of the court that the failure to grant a receipt was due to some reasonable cause, he will not be liable to pay any compensation and he shall as a matter of course be immune from the presumption suggested in sub-clause (2), but in case he fails to grant a receipt and it is proved to the satisfaction of the court that the refusal to grant the receipt was not due to any reasonable cause, then I fail to understand why it should not be presumed that this failure to grant a receipt was with intent to dishonestly misappropriate the amount so recovered within the meaning of section 403 of the Indian Penal Code. Some of my zamindar friends appear to think that this is a preposterous suggestion, that such an unjustifiable presumption should be made against any member of their class, but I am sorry to say that such considerations did not appeal to them when they were considering clause 95 where it is provided that any person against whom a decree or order of ejectment from a holding or any portion thereof has been executed under the provisions of this Act, who re-enters or attempts to re-enter into occupation of the same without the written consent of the person for the time being entitled to occupy the same, shall be presumed to have done so with the intent to intimidate or annoy the person in possession within the meaning of section 441 of the Indian Penal Code. If it is fair to have such a presumption in that section against a tenant, I think it is but fair that we provide this safeguard in the clause here, and I see no valid reason why this clause should not be accepted, when it is well known that if the tenant fails to legally prove the payment of rent without a receipt he has either to pay it over again or to be ejected from his land and thus to be thrown out of his occupation.

Hon'ble Sir Sam O'Donnell: This also is an amendment which speaks for itself. If the landlord without reasonable cause refuses to give a receipt, then he will be penalized under the provisions of clause 142 as it stands. There is no need to impose any further penalty, and the particular penalty suggested is absurd. How can a man dishonestly misappropriate his own property? The tenant comes to the landlord, he pays to the landlord the rent which is the landlord's due; how then can any question of dishonest misappropriation arise? The honourable member might as well say that the landlord will be presumed to have committed culpable homicide?

Khan Bahadur Hafiz Hidayat Hussain: I just wish to make one remark. My friend Pandit Nanak Chand has referred to clause 95, which we passed. Under section 95 we protect the decrees of the courts. The section provides only for the vindication of the formal adjudication of parties' rights come to by a court of law. You cannot flout the orders of a court of justice with impunity. The comparison between these two clauses is as wide of the mark as any that could be imagined.

Pandit Nanak Chand: It has been pointed out that the rent received by the zamindar is his due, and how can it be attributed to him that he received it with criminal intent of misappropriating it. But I maintain that while the rent is certainly due from the tenant and the landlord is entitled to receive not only rent but receive it with interest that may be due on that rent. The difficulty, however, arises where the landlord fails without reasonable cause to deliver a receipt. What is to be presumed? The presumption ought to be that though the tenant has actually paid the rent, for some reason or other which is not a reasonable cause the zamindar has not given the receipt. I think in such cases there should be a presumption against the zamindar. It is pointed out that in the clause as has been presented by the select committee it is provided that a tenant will be entitled to receive a certain compensation, but it will be so difficult for the poor tenants to prove this to the satisfaction of the court. If there is a drastic provision of the character that I have suggested, then even the careless zamindars will see to it that the receipts are properly granted and if this is done much of the litigation which might otherwise arise would be averted. This provision will not in any way affect those zamindars who are already particular in granting receipts and whose estates are well managed.

Question, that a new sub-clause be inserted, put and negatived.

Question, that clause 142 as reported by the Select Committee stand part of the Bill, put and agreed to.

CLAUSE 143.

(Omitted by the Select Committee).

Pandit Govind Ballabh Pant: My amendment is No. 138 on the old list.

Hon'ble the President: I am afraid that it is not in proper form for reasons for which the amendment of Rai Sahib Lala Jagdish Prasad was declared out of order. I think the object of the honourable member will be served if he moved an amendment to the amendment of Pandit Nanak Chand.

Pandit Nanak Chand : I move that the following clause be added :—

143. " When in any suit for arrears of rent, or any suit in which the payment of rent is in issue between the landholder and the tenant, the court finds that the landholder has refused or neglected to deliver to the tenant a receipt, or to prepare and retain a counterfoil or copy of the receipt, containing substantially the particulars required by section 141, it may award the tenant such compensation not exceeding double the amount or value of the rent or canal dues paid as it may see fit to decree."

I think, Sir, the amendment speaks for itself. When in a case the court comes to this finding that a land-holder has refused or neglected to deliver to a tenant or to prepare a counterfoil of the receipt, the court may grant whatever compensation it deems fit in the case.

Pandit Govind Ballabh Pant : I propose first of all to insert in this amendment between the words "has" and "refused" the words "without reasonable cause". I can conceive of cases in which a landlord may fail to give a receipt to a tenant and he may be precluded from doing so, and I personally do not see any reason why he should be required to award any compensation to the tenant when he can satisfy the court with reasons which stood in the way of his giving receipt. The amended clause as it will run now is exactly the same as it found place originally in the Bill as clause 143. It is a corollary to clause 142. In fact the case seems to me to be more reprehensible than the one that may be governed by clause 142. In cases that may come under 142 the land-holder may not have given a receipt and yet he may have honest intentions all the time though he did not give a receipt. He may never intend to claim the amount again from the tenant. Clause 143 will apply clearly to cases where the dishonesty of the land-holder is conclusively established. He gets rent, pockets it, refuses or fails to give a receipt, though there has been no reasonable ground for this omission on his part and then file a suit in court claiming the same amount which he had received and for which he had deliberately omitted to give a receipt. It seems to me that these are the cases which deserve in fact more serious penalty than that provided in clause 142. But in order to keep to the scheme of the Bill and to the original clause I have kept to the amount of the penalty provided in clause 143. I think all the honourable landholders—I beg your pardon—all the honourable landlords who are sitting here will agree with me in the view that I have taken, that while all the honest landlords should be protected in every way, it is up to them and they owe a moral responsibility to their order, that the dishonest landlords are weeded out and that they are disowned by them and it is with a view to maintain their fair name that I propose that this clause 143 should be restored. I hope that it will be unanimously accepted by the House.

Hon'ble Sir Sam O'Donnell : This amendment as amended by the learned member for Naini Tal merely reproduces a provision in the Bill as it was introduced and in the Bill prepared by the Board of Revenue in 1918. I think that clause 143 in the original Bill was a reasonable clause and I think it was an error on the part of the Select Committee, with all deference to the Select Committee, to have deleted that clause. I am, therefore, prepared to accept the amendment as amended by the honourable member for Naini Tal.

Khan Bahadur Hafiz Hidayat Husain : I am very much disappointed to hear the speech of the Hon'ble the Finance Member. It appears to me that the purport of the amendment of the honourable mover and the amendment to the amendment that has been moved by the honourable member for Naini Tal carries the implication that the landlord is a born dishonest creature and that he tries to evade giving a receipt after having received the payment of rent whenever he can do so. I think it is far from being the case. The amendment further implies that the tenant is as a simpleton as he used to be a hundred years back. This is also incorrect. On the contrary the tenant is now a clever discerning fellow who knows all his rights under the law and does not pay a single pie to the landlord without obtaining a duly executed receipt. Unless and until the receipt is given to him he refuses to part with a single pie. Even this morning the honourable leader of the Swaraj party referred to certain proposals adopted by the conference convened by the tenants. Now, if the tenants can go so far as to convene conferences for the ventilation of their grievances and adopt resolutions for the protection of their rights, I cannot believe that they are such ignorant and down trodden lot as they are often depicted on the floor of this House. This provision which had been dropped in the Select Committee after full consideration even by the Government members. . . .

Hon'ble the President : The honourable member is not allowed to allude to what happened in the Select Committee.

Khan Bahadur Hafiz Hidayat Husain : No, Sir, I was not referring to that. I was only saying that this clause which was rejected by the Select Committee, is now being accepted by the Government that was a party to its rejection. In the report of the Select Committee cogent reason has been given for its rejection, but no reason is now being shown for this light-hearted acceptance of this mischievous clause. The report of the Select Committee—and that report is unanimous—says :—

“We have omitted this clause as we think that the remedy provided in clause 142 is sufficient and the extension of time provided by clause 143 will encourage tenants to set up false pleas.”

I do not know what has happened in the meantime—and the period that has elapsed is not more than sixty days—to have induced the Government to change its opinion and hold that the extension of time provided in clause 143 will not now encourage tenants to set up false pleas. I think no reason whatsoever has been shown as to why this clause should be re-inserted and I therefore very strongly oppose this amendment.

Maulvi Muhammad Obaid-ur-Rahman Khan : I am very sorry to repeat what I said this morning that I was much disappointed to see that the Government had accepted the rejected clause totally against the wishes of the zamindars. I may point out that the Government members in their note of dissent have not made any mention of their intention of moving it again in the Council and have not given any notice of such amendment. Now, they find, as I have already said this morning, that we are in minority and that we are quite unable to protect our interests, they have accepted the amendment on the ground that the clause is very reasonable. In the Select Committee they were of opinion that the clause should . . .

Hon'ble the President: The honourable member should not refer to the proceedings of the Select Committee.

Maulvi Muhammad Obaid-ur-Rahman Khan: I am not referring to the proceedings of the Select Committee, but simply repeating what has just now been said by the Hon'ble the Finance Member.

Hon'ble Sir Sam. O'Donnell: I simply said that the omission of this clause by the Select Committee was an error. I did not refer to the proceedings of the Select Committee. It was a published fact that the Select Committee did omit the clause.

Maulvi Muhammad Obaid-ur-Rahman Khan: What I take objection to is that the Government members did not express their intention in the note of dissent and they have now suddenly accepted the amendment and the most injurious thing is that they are asking that double compensation should be given. I do not find any reason why double compensation should be given. If the point is that a mistake has been committed only the same amount should be retained. In any case double compensation should not be saddled on the zamindar. I put in my emphatic protest against it and totally oppose it. I know that we shall have to face a defeat, which is very unfortunate, but I hope the House will consider the position and give their reasonable opinion upon the question which is now before them.

Babu Mohan Lal Saksena: I move that the question be now put.

Rao Sahib Abdul Hameed Khan:

جناب والا —

آنریبل مسٹر نانک چند صاحب کی ترمیم اور اس کی ترمیم در ترمیم جو میرے معزز دوست آنریبل مسٹر پنت صاحب نے پیش کی ہے اور اس کے بعد آنریبل فائیننس میمبر صاحب کی تائید یہ سب باتیں میرے لیئے بہت ہی افسوسناک اور تعجب خیز ہیں۔ جناب والا — سب سے پہلا سوال اس مسئلہ پر گفتگو کرتے ہوئے یہ پیدا ہوتا ہے کہ یہ بل جو اس قدر اہم ہے اور جس نے اس قدر وقت اس کونسل کا لیا ہے اس غریب کا وارث کون ہے — جس حالت میں کہ یہ کونسل کے سامنے آیا ہے قدرتا اس سے یہ خیال تھا کہ گورنمنٹ اس بل کی انچارج یا وارث ہے۔ لیکن جیسا کہ ابھی میرے ایک معزز دوست نے بڑی وضاحت سے ظاہر کیا ہے اس مسئلہ کے متعلق گورنمنٹ نے اپنے note of dissent اختلافی نوٹ میں کچھ نہیں فرمایا اور نہ اپنی کوئی ترمیم amendment بھیجا لیکن جب یہ تحریک کی گئی کہ یہ کلاز clause دفعہ اس بل میں insert فرمادی جائے تو آنریبل فائیننس میمبر صاحب نے اس کی تائید فرمادی ایسی صورت میں گورنمنٹ کی طرف سے یہ تائید قانوناً اور اخلاقاً قابل ملامت ہے یہ عرض کروں گا کہ جس قسم کے شبہات اور بد گمانیاں زمینداروں کے خلاف اس دفعہ کو جزو قانون بنانے سے متصور ہیں وہ یقیناً نہایت ہی شرمناک ہیں۔ اس مقصد کے لیئے دفعہ ۱۲۲ اور دوسری دفعات میں کافی تحفظ موجود ہے اور میں سمجھتا ہوں کہ اس پر زیادہ زور دینا اور اس ترمیم کو جزو قانون بنانے کے لیئے اصرار کرنا ایسی حالت میں جبکہ نہایت mischievous شرارت آمیز

[Rao Sahib Abdul Hameed Khan.]

پروپیگنڈا کی وجہ سے ہمارے زمیندار اپنے گھروں سے نہیں آسکے نہایت بیچا ہی۔ میں یہ سمجھتا ہوں جیسا کہ میرے دوست مولوی عبدالرحمن صاحب نے فرمایا ہے کہ اگر کسی سزا کا تجویز کیا جانا ضروری ہے تو وہ ہو سکتی ہے کہ زمیندار اُنہی ہی مقدار رقم واپس کر دے لیکن اِس رقم کا دینا کرنا زیادتی ہے۔ اِس کے متحرکین صاحبان نے یہ بھی فرمایا ہے کہ اِس دفعہ ۱۲۳ کو منظور نہ کرنے کی صورت میں مقدمہ بازی میں ترقی ہوگی لیکن میرے خیال میں کاشتکار کے لیئے دینے کی طمع اور لالچ سب سے زیادہ مقدمہ بازی کا باعث ہوگی۔ اگر مقدمہ بازی کو ترقی دینا اِس بل کا unwritten object غیظ تجویز شدہ مقصد نہیں ہے تو میں اِس کی مخالفت کرتا ہوں اور گورنمنٹ سے دیکھو اپنے سوراہست دوستوں سے بڑے ادب کے ساتھ اپیل کرتا ہوں کہ وہ اِس کو جزو قانون بنائے جانے پر اصرار نہ کریں کیونکہ جس حالت میں یہ بھی تین تین کاشتکار کے لیئے دونا معاوضہ اُس کو کوئی سمجھدار اور منصف مزاج شخص پسند نہیں کر سکتا ہے۔ مجھے اُمید ہے کہ میری یہ اپیل جو کہ اِس وقت بہت ہی Helpless minority قلیل التعداد جماعت کی طرف سے اپیل ہے ضرور قبول ہوگی کیونکہ نہ تو ہم زمیندار ہمیشہ Minority قلیل التعداد رہنے والے ہیں اور نہ ہمیشہ فقیروں کی طرح سے اپیل کرنے والے ہیں۔ جناب والا۔ اب معاملہ کو معاملہ کی طرح اگر دیکھا جائے تو صورت بدقسمتی سے یہ ہے کہ دفعہ ۱۲۳ اگر منظور کر لیا جائے تو کاشتکار کے لیئے صاف اور گھٹا ہوا راستہ یہ ہوگا کہ وہ لگان زمیندار کو نہ دے اور زمیندار جس وقت بقایا کا دعویٰ کرے تو یہ کہہ کہ زمیندار نے لگان لے لیا مگر رسید نہیں دی اور اُس کو اپنے ہم پیشہ کاشتکاروں کی مدد سے صحیح ثابت کرے اگر وہ صحیح ثابت کرنے میں کامیاب ہو گیا تو اُس کو مطالبہ کی دگنی رقم زمیندار سے مفت ہاتھ آئی ورنہ بصورت ناکامیابی مطالبہ جو اُس پر واقعی واجب تھا ادا کر دیا۔ کون کمبخت کاشتکار اُس کے بعد ہمیشہ یہہ جو نہ کہیلیگا اور اس طرح ہر موقع پر قسمت آزمائی کیئے بغیر زمیندار کو یہہ دیکھا۔ علاوہ اِس کے کہ زمیندار کے لیئے پٹواری اور تحصیلدار کی دائمی خوشنودی حاصل کرنا اور یہی ضروری ہو گیا۔ حکام کا اثر اور دباؤ زمیندار پر پہلے سے زیادہ ہوگا کیونکہ حکام کی نوا سے بڑھی کاشتکاروں کے لیئے ہمت افزائی کا باعث ہوگی میرے سوراہست دوست ذرا غور کریں کہ اِس کے بعد کیا زمیندار ملکی اور فعلی تحریکوں میں حصہ لے سکتے ہیں اور کیا حکام کی معمولی ناراضگی اُن کو تباہ نہ کر سکیگی۔ یہہ اتنا بڑا ظلم ہے کہ میں اس پر صراحت احتجاج کے لیئے کافی سخت الفاظ نہیں پاتا ہوں *

اگر اِس دفعہ کا اضافہ ضروری ہے تو انصاف اُس کا مقتضی تھا کہ کوئی پاداش کاشتکار کے لیئے بھی اِس میں رکھی جاتی تاکہ یہہ دفعہ اُس کے لیئے خالصاً تحریک اور تہفیب کا موجب نہ ہوگا۔ کاشتکاروں کے نام نہان انعام

کہ جلد سے جلد تمول میں تبدیل کرنے کا اور زمینداروں کو زمینداری سے دست بردار کرانے کا اس سے بہتر کوئی اور انتظام ہو ہی نہیں سکتا تھا *

Rai Sahib Lala Jagdish Prasad : If the Council permits me, I will just move an amendment and it is this that the word "double" be deleted in the ninth line.

Hon'ble the President : How will it read then ?

Rai Sahib Lala Jagdish Prasad : "Not exceeding the amount or value of the rent or canal dues paid as it may see fit to decree."

Babu Nemi Saran : I object.

Hon'ble the President : I have not invited any objection. The original amendment was in time. It has come before the House today only. The present amendment to the amendment does not enlarge its scope.

Pandit Nanak Chand : I have nothing more to say.

Hon'ble Sir Sam O'Donnell : The honourable member for Aligarh has referred to the fact that there is no reference to this clause in the minute of dissent signed by myself and other official members and appended to the report of the Select Committee. That is quite true, but naturally we, like other members of the Select Committee, confined ourselves to the big important points in our minute. There are quite a number of amendments which have been moved or supported by the zamindar members of the committee which were not referred to in their minutes of dissent. Then the honourable member has suggested that we would not have supported this amendment but for the fact that the zamindar members are not up to their full strength. I dealt with that suggestion before. I have repeatedly proposed, supported or opposed amendments in this Council when it was quite clear that the decision was likely to go against us. I should have supported this amendment whatever the position was as regards the voting strength of the various parties.

Then, Sir, it is said that this clause implies that landlords, as a rule, are dishonest. I do not see that there is any such implication any more than that the Penal Code implies that the majority of the people are murderers or robbers. We have to provide for the exceptional case, the case of the landlord who does without reasonable cause refuse to give a receipt. It is to that case that the provisions of this amendment would apply.

As to the amount of compensation, might I refer honourable members to clause 44 of the Bill which says :—

"A person taking or retaining possession of a plot or plots of land without the consent of the landholder and in contravention of the provisions of this Act shall be liable to ejectment on the suit of the land-holder and also to pay damages which may extend to four times the annual rental value.

The clause only refers to the case in which the landlord deliberately refuses to give a receipt. In such a case why should he not pay more than the amount which he received ?

Hon'ble the President : The amendment moved is that the following new clause be added :—

"When in any suit for arrears of rent, or any suit in which the payment of rent is in issue between the land-holder and the tenant, the

[Hon'ble Sir Sam O'Donnell.]

court finds that the land-holder has refused or neglected to deliver to the tenant a receipt, or to prepare and retain a counterfoil or copy of the receipt, containing substantially the particulars required by section 141, it may award the tenant such compensation not exceeding double the amount or value of the rent or canal dues paid as it may see fit to decree."

Since then an amendment has been moved that between the words "has" and "refused" the words "without reasonable cause" be inserted.

Question, that these words be inserted put and agreed to.

Hon'ble the President: The next amendment is that the word "double" in the proposed amendment be deleted.

Question, that the word "double" stand part of the clause, put and agreed to.

Question put, that the amendment, as amended, be added to the Bill as a new clause.

The House divided: Ayes, 31; Noes, 10.

Ayes.

Hon'ble Sir Sam O'Donnell.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan

Mr. G. B. Lambert.

Mr. E. A. H. Blunt.

Kunwar Jagdish Prasad.

Sir Ivo Elliott.

Mr. F. H. Tillard.

Mr. H. A. Lane.

Mr. K. L. Yorke.

Mr. R. Burn.

Mr. A. W. Pim.

Mr. B. J. K. Halliowes.

Mr. E. L. Norton.

Mr. H. G. Billson.

Mr. R. J. S. Dodd

Colonel A. W. R. Cochrane.

Mr. A. E. Mackenzie.

Mr. M. F. P. Herchenroder.

Mr. H. David.

Babu Khem Chand.

Babu Narayan Prasad Arora.

Babu Mohan Lal Sakseena.

Thakur Manjit Singh Rathor.

Pandit Nanak Chand.

Thakur Shiva Narayan Singh.

Babu Nemi Saran.

Chaudhri Badan Singh.

Pandit Sri Krishna Dutt Paliwal.

Rai Bahadur Thakur Hanuman Singh.

Pandit Govind Ballabh Pant.

Mr. Tracey Gavin Jones.

Noes.

Rai Jagdish Prasad Sahib.

Thakur Rajkumar Singh.

Rai Bahadur Babu Ram Nath Bhargava.

Rao Sahib Kunwar Sardar Singh

Khan Bahadur Mr. Muhammad Aslam Saifi.

Rao Sahib Abdul Hameed Khan.

Mr. Muhammad Ismail Ali Khan.

Maulvi Muhammad Obaid-ur Rahman Khan.

Khan Bahadur Hafez Hidayat Husain.

Khan Bahadur Munshi Siddiq Ahmad.

CLAUSES 144 TO 151.

Question, that clauses 144, 145, 146, 147, 148, 149, 150 and 151 stand part, put and agreed to.

CLAUSE 151A.

Pandit Nanak Chand:—I beg to move . . .

Hon'ble Sir Sam O'Donnell: I rise to a point of order, Sir. No due notice of this amendment was given.

Hon'ble the President: Notice of this amendment was received at 12.30 p.m. on July 23, 1926.—

Is there any objection to this amendment being moved ?

Hon'ble Sir Sam O'Donnell : I object.

Hon'ble the President : Since an objection has been raised, the amendment cannot be moved.

Hon'ble the President : His Excellency the Governor has allotted dates from July 26 to August 7, 1926 (excluding Sunday), for official business.

The Council was then adjourned till Monday, July 26, 1926, for the consideration of the Agra Tenancy Bill.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Monday, July 26, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m.
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(71).

Hon'ble Sir Sam O'Donnell.	Thakur Sadho Singh.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.	Lieut. Raja Durga Narayan Singh.
Hon'ble Rai Rajeshwar Bali.	Raja Narayan Pratap Singh.
Hon'ble Thakur Rajendra Singh.	Pandit Sri Krishna Dutt Paliwal.
Hon'ble Nawab Muhammad Yusuf.	Babu Parsidh Narayan Anad.
Mr. G. B. Lambert.	Rai Sahib Babu Dip Narayan Roy.
Mr. E. A. H. Blunt.	Rai Bahadur Thakur Hanuman Singh.
Kunwar Jagdish Prasad.	2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Sir Ivo Elliott.	Bhaya Hanumat Prasad Singh.
Mr. P. H. Tillard.	Pandit Govind Ballabh Pant.
Mr. H. A. Lane.	Pandit Har Govind Pant.
Mr. R. L. Yorke.	Mr. Mukandi Lal.
Mr. R. Burn.	Babu Ram Chandrar Sinha.
Mr. A. W. Pim.	Khan Bahadur Mr. Muhammad Aslam Saifi.
Mr. B. J. K. Hallows.	Maulvi Zahur-ud-din.
Mr. E. L. Norton.	Rao Sahib Abdul Hameed Khan.
Mr. H. G. Billson.	Nawabzada Muhammad E'jaz Ali Khan.
Mr. R. J. S. Dodd.	Khan Bahadur Chaudhri Amir Hasan Khan.
Colonel A. W. R. Cochrane.	Mr. Muhammad Ismail Ali Khan.
Mr. A. H. Mackenzie.	Maulvi Muhammad Obaid-ur-Rahman Khan.
Mr. M. F. P. Herchenroder.	Dr. Zia-ud-din Ahmad.
Mr. H. O. Desanges.	Khan Bahadur Hafiz Hidayat Hussain.
Mr. H. David.	Khan Bahadur Shaikh Masud-uz-Zaman.
Babu Khem Chand.	Khan Bahadur Mr. Muhammad Ismail.
Babu Narayan Prasad Arora.	Khan Bahadur Saiyid Muhammad Ashiq Hussain.
Babu Mohan Lal Saksena.	Khan Bahadur Mr. Ashiq Hussain Mirza.
Babu Jai Narayan Chaudhri.	Khan Bahadur Munshi Siddiq Ahmad.
Thakur Manjit Singh Rathor.	Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Rai Jagdish Prasad Sahib.	Rai Bahadur Lala Mathura Prasad Mehrotra.
Chaudhri Jaswant Singh.	Mr. E. M. Souter.
Pandit Nanak Chand.	Mr. Tracey Gavin Jones.
Thakur Rajkumar Singh.	Dr. Ganesh Prasad.
Thakur Shiva Narayan Singh.	
Rai Bahadur Babu Ram Nath Bhargava.	
Rai Amba Prasad Sahib.	
Rai Bahadur Pandit Kharagjit Misra.	
Babu Nemi Saran.	
Chaudhri Badan Singh.	
Rao Sahib Kunwar Sardar Singh.	

QUESTIONS AND ANSWERS.

STARRED QUESTIONS.

IMPROVEMENT TRUST, ALLAHABAD.

* 1. **Mr. Zahur Ahmad :** Will the Government be pleased to state what is the population of the different communities inhabiting Allahabad city, specially Muslims ?

* 2. (a) What was the population of Muslims and Hindus in the muhallas now covered by the newly constructed Hewett, Sheo Charan Lal, Crosthwaite, Zero roads and East and West Idgah lanes at Allahabad, and also the number of plots on these roads which were auctioned for building purposes?

(b) What is the total number of houses of different communities acquired for the construction of roads and plots mentioned in part (a)?

(c) How many of the plots mentioned in part (a) were acquired by the Hindus and Muslims respectively when the same were sold by public auction?

(d) Was any provision made by the Allahabad Improvement Trust for the housing of the dehouseed persons?

(e) Were the dehouseed persons properly housed after being deprived of their houses?

* 3. What is the population of Hindus and Muslims in muhallas Sabzimandi, Hammam, Sarai Garha, Dondipur, Garhi, Shahganj, Pandri-ba, Chak and Mirganj?

(a) What is the area covered by the muhallas Sabzimandi, Hammam, Sarai Garha, Dondipur, Garhi, Shahganj and Pandri-ba?

(b) Is it a fact that the area covered by the muhallas has got Johnston-ganj road on the east, Station road on the west both running from north to south, Thateri Bazar road and Pathar-ki-gali roads passing through these muhallas and running from north to south?

(c) Is it a fact that the roads are wide *pacca* roads through which *ekkas*, *garis* and motor cars can pass easily?

(d) What is the width of the roads mentioned in part (b)?

(e) Is it a fact that in the same manner the area mentioned in part (a) has got three parallel roads, namely, Goodshed road, Sarai Garha road (from clock tower) and Shahganj roads (from Johnston-ganj road) and many *pacca* lanes running from west to east?

(f) It is a fact that *ekkas*, *garis* and motor cars can easily pass through these roads?

(g) What is the width of the roads mentioned in part (e)?

* 4. (a) Is the Government aware that the Allahabad Improvement Trust is contemplating and proposing a scheme of opening another road from Johnston-ganj near Gudri Bazar to Station road through the area mentioned in part (a) of the foregoing question?

(b) If so, what is the distance of this new contemplated road from Goodshed road, Sarai Garha road and Shahganj road which run across the Johnston-ganj road and also from Grand Trunk road?

(c) What is the number of houses owned by Hindus and Muslims respectively on the sites and areas which will be covered by this contemplated and proposed new road mentioned in part (a) and the plots which will be acquired for housing scheme on this new road?

(d) Is it a fact that houses in the muhallas mentioned in part (a) of the foregoing question are generally single-storeyed and occupied and owned by Muslims and they are not congested and have got sufficient number of metalled roads at short distance?

(e) Is it a fact that the area mentioned in part (a) of the foregoing question has got some 25 mosques and a number of *imambaras*?

(f) Will the Government be pleased to state the reasons and the necessity of opening this new road?

* 5. What is the area covered by Sarai Garha?

- (a) What is the area of the existing open space in the Sarai Garha ?
- (b) Is it a fact that houses are situated around this open space in Sarai Garha ?
- (c) Is it a fact that a metalled road passes through Sarai Garha from east to west and joins Grand Trunk road ?
- (d) Is it a fact that the two open entrances of Sarai Garha are situated on Grand Trunk road ?
- (e) Is it a fact that Station road is at a distance of hundred yards running to the west of Sarai Garha ?
- (f) Is it a fact that there is another metalled road running through Sarai Garha from south to north ?
- (g) Is it a fact that Sarai Garha is mainly inhabited and owned by Muslims ?
- (h) Is it a fact that Sarai Garha is the only place in the city where Muslims coming to Allahabad take their temporary lodging ?
- (i) Is it a fact that it has got two mosques and several *imambaras* in it ?

(j) What is the distance between the west entrance of Sarai Garha and Khusru Bagh ?

(k) Is the Government aware that the latrine constructed by the Allahabad municipal board on the *maidan* of Garhi-ki-Sarai has been placed on a very unsightly site ?

(l) Is the Government aware that the municipal board, Allahabad, has made the same area into a *dépôt* for storing and carting of filth ?

(m) Is the Government aware that the nightsoil from the adjoining muhallas is brought in the Garhi-ki-Sarai and carted from there ?

(n) Is the Government aware that the place chosen is quite open and on a public thoroughfare and quite close to the mosque existing on the same ground and that the arrangement is too objectionable ?

*6. (a) What is the distance between Sarai Garha, Chittooi-ki-Mandi, Bachhoo Lal-ki-Mandi and Gur-ki-Mandi ?

(b) Is it a fact that these *mandis* are more congested and insanitary as compared to Garhi-ki-Sarai ?

(c) Do the Government intend to acquire any of these *mandis* for the open area on the Grand Trunk road ?

(d) Is there any open area on the Grand Trunk road in the south ?

*7. Is the Government aware that the compact population of purely Muslim muhallas mentioned in question No. 3(a) will be greatly disturbed and *dehoused* by the contemplated scheme of the 'Improvement Trust' in the muhallas Shahganj, Dondipur, Sarai Garha, Garhi, Sabzimandi, Hammam and Pandriha ?

*8. (a) How many roads and *pacca* lanes run south to north between Johnstonganj and Sheo Charan Lal road and how many between Grand Trunk road and Hewett road run east to west through Chak and Mahajani Tola ?

(b) What is the distance between Zero road and Grand Trunk road on the one side and Zero road and Hewett road on the other ?

(c) Is the Government aware that muhalla Chak is a purely Muslim muhalla and has got many roads running east to west and north to south around it ?

*9. (a) Is the Government aware that the Improvement Trust is acquiring Allah Bande-ka-Phatak for an open area in Mirganj ?

(b) Is the Government aware that the *phatak* has got a purely Muhammadan population of such persons who have their business close by and that if the scheme is carried out the occupiers will suffer?

(c) Is the Government aware that this *phatak* is not congested as compared to the Gur-ki-Mandi.

(d) Is the Government aware that Gur-ki-Mandi and Passar Hatta in the heart of the city near Chowk are more unhealthy, unsightly, insanitary and congested than the *phatak* and Sarai Garha?

*10. (a) Is it a fact that the Trust proposes to widen the road in Mirganj to the north of Grand Trunk road?

(b) Is it a fact that the extension of this road across and south of the Grand Trunk road through the Gur-ki-Mandi road is not proposed by the Trust?

(c) Is it a fact or not that the Gur-ki-Mandi and the area further south of it is more congested and insanitary as compared to the muhallas mentioned in question No. 8?

(d) Will the Government be pleased to state the reasons why the Trust of Allahabad is not going to extend this Mirganj road through Gur-ki-Mandi and south of Grand Trunk road up to Jumna?

*11. (a) Is it a fact that the distance between Mirkhan-ki-Sarai and Allah Bande-ka-Phatak is only about 150 paces?

(b) Is it a fact that Improvement Trust of Allahabad has proposed to have an open area and a park in Mirkhan-ki-Sarai?

(c) Is it a fact that the area proposed for an open space and park in Mirkhan-ki-Sarai has got a number of *pacca* and *kachcha* graves?

(d) How many *pacca* and *kachcha* graves are in the space acquired for the open area in Mirkhan-ki-Sarai?

(e) What do the Government intend to do about these graves?

(f) Do the Government intend to leave the looking after of these graves to the Musalmans in order to ensure their protection and sanctity?

(g) Is the Government aware that Musalmans hold *urs* ceremony on these graves and offer *jatiha* on every Thursday evening and also make illumination there?

(h) Is the Government aware that there is a great feeling among the Musalmans of Allahabad against the acquisition of this graveyard consisting of so many graves?

(i) Will the Government be pleased to state the reasons of another open area in Allah Bande-ka-Phatak when there is going to be an open area and a park in Sarai Mirkhan at such a short distance?

(j) Will the Government be pleased to state the number of Hindu and Muslim houses on the area which was acquired by the Improvement Trust, Allahabad, in Sarai Mirkhan and which is now covered by a Trust building and an open ground?

*12. (a) Is the Government aware that in the Passar Hatta situated to the south of the Allahabad Chowk the shops are all very narrow, small, ill-ventilated, untidy and like so many pigeon holes, and therefore very unsightly on the Grand Trunk road?

(b) Will the Government kindly inquire from the Allahabad Improvement Trust as to why this area and the shops have been left alone, and why no steps have yet been taken to improve the sanitary condition there?

*13. (a) Is the Government aware that the area now called Gur-ki-Mandi was once the seat of a nice garden, and that now the same area has

too many and ill-ventilated houses all round and the *mandi* is in a very insanitary condition?

(b) Is the Government aware that it was proposed by Mr. Lanchester to construct a new road passing the Gur-ki-Mandi southwards?

(c) Will the Government kindly inquire from the Allahabad Improvement Trust why this much needed scheme was not taken in hand?

*14. (a) Is it a fact that Yahyapur, Chowk Gangadas, Atarsuiya, Khushhalparbat, Bharti Bhawan and Uncha Mandi are purely Hindu muhallas?

(b) Is it a fact that these muhallas are more congested and insanitary than the muhallas mentioned in question No. 3(a)?

(c) Is it a fact that these muhallas lie to the south of the Grand Trunk road?

(d) Will the Government kindly state the population of Muhammadans and Hindus in these muhallas?

(e) Will the Government kindly state why no scheme of constructing any new road or widening the present roads to the south of the Grand Trunk road which have very great traffic has not been proposed or prepared by the Trust?

*15. (a) Is the Government aware that the Atarsuiya lane is too narrow for the usual traffic on it and that the passage of two ordinary conveyances from opposite directions is at certain places on this road almost impossible and this causes a great deal of inconvenience to the public?

(b) Is it a fact that the *Dashera* processions with thousands of men and number of elephants and also *Muharram* processions have to pass along this road with a considerable difficulty and inconvenience resulting in serious accidents?

(c) Is it a fact that even on ordinary days the passers-by have been crushed to death on this road by bullock carts and conveyances owing to its being too narrow?

(d) What is the width of this Atarsuiya road?

(e) What is the distance between Nai Basti crossing and Muthiganj crossing on the Grand Trunk road?

(f) How many roads lead from the Grand Trunk road between Nai Basti crossing and Muthiganj crossing towards south?

(g) Is it a fact that the Atarsuiya road is the only road to the south of the Grand Trunk road between Karaila Bagh road and Muthiganj road on which the traffic of muhallas lying to the south of Kotwali and Grand Trunk road has to pass?

(h) What is the population of muhallas situated to the east, west and south of Atarsuiya road?

(i) What is the population of Hindus and Musalmans in these muhallas?

(j) Is the Government aware that a scheme was once prepared by the Allahabad Improvement Trust and municipal board to widen this Atarsuiya road?

(k) Will the Government kindly state why the Improvement Trust did not take in hand this much needed scheme?

*16. (a) Is the Government aware that in the Civic survey map of 1917—1921, embodied in the annual report of the Allahabad Improvement Trust for 1922 and 1923, muhallas Yahyapur, Muthiganj and some other muhallas lying to the south of Grand Trunk road have been painted in the

blackish colour signifying that the area is the hot bed and home of infectious, contagious and epidemic diseases?

(b) Is the Government aware that the lanes in above muhallas are extremely narrow, that the sanitary condition within and outside the houses there are generally very bad and that in some of these muhallas even the light of sun does not reach?

(c) Will the Government kindly inquire from the Allahabad Improvement Trust why no steps have yet been taken to open up these congested and infected areas?

(d) Will the Government take any action to improve the sanitary condition of these muhallas and also construct new roads towards the south of the Grand Trunk road?

*17. Will the Government state the reasons why the Allahabad Improvement Trust is going to construct a number of roads, open areas and parks within a small and comparatively healthier area lying to the north of the Grand Trunk road in spite of the so many good *pacca* roads that already exist there, while on the other hand nothing of the kind is done to the south of Grand Trunk road, in which area there is no road between the Nai Basti road and Baluaghat road excepting the Atarsuiya road, and the distance between these two roads being that of more than a mile?

*18. (a) Is the Government aware of the widespread feeling among one section of the citizens of Allahabad against the contemplated and under-disposal scheme of the Improvement Trust?

(b) Has the attention of the Government been drawn to a number of public meetings held under the presidency of leading citizens of Allahabad in nearly all the muhallas of the city protesting strongly against the proposals both under contemplation and under disposal of the Allahabad Improvement Trust?

(c) Has the attention of the Government been drawn to the resolutions passed in the meetings and of which copies were sent to the Government?

(d) Is the Government aware of the fact that responsible deputation of the citizens of Allahabad waited upon the District Magistrate of Allahabad and laid before him the grievances against the contemplated and under-disposal schemes of the Trust?

(e) Is the Government aware that another deputation of the leading citizens of Allahabad waited upon the Chairman of the Improvement Trust to lay before him the grievances against the schemes of the Trust?

*19. (a) Is the Government aware that the authorities of the Improvement Trust, have prepared a typed application addressed to the Chairman, Improvement Trust, Allahabad, and to the Secretary to Local Self-Government department, United Provinces, which they managed to distribute through their agents and canvassers to the inhabitants of different muhallas for their signature with a view to show that they are supported by the public?

(b) Will the Government be pleased to lay the copy of this typed application on the table and also kindly state the number of such applications received after signature in the office of the Trust?

(c) Will the Government be pleased to inquire if such applications were composed and typed in the Improvement Trust office?

*20. (1) What is the representation of the Musalmans on the Allahabad Improvement Trust?

(2) Is there any Muslim member on the Allahabad Improvement Trust selected or chosen by the Musalmans of Allahabad or returned from among the Musalman members of the municipal board of Allahabad?

(3) Do the Government intend to take any step to ensure a satisfactory representation of Musalmans on Allahabad Improvement Trust?

*21. Will the Government kindly appoint a committee consisting of a sufficient number of Muhammadans to bring to light the places, muhallas and lanes which have so far been neglected, and which as it appears from the committee's report should have been taken in hand first and foremost?

Hon'ble Rai Rajeshwar Bali: Inquiry has been made and the complete information is not yet available.

Khan Bahadur Mr. Muhammad Aslam Saifi: When are the replies likely to be received?

Hon'ble Rai Rajeshwar Bali: I hope shortly.

Khan Bahadur Mr. Muhammad Aslam Saifi: Is it not possible to have found the replies from the census report?

Hon'ble Rai Rajeshwar Bali: There are so many details wanted, that we could not get the replies earlier.

Khan Bahadur Mr. Muhammad Aslam Saifi: May I know when these questions were received by the Hon'ble Minister?

Hon'ble Rai Rajeshwar Bali: I want notice of that.

PANCHES IN TOWN AREA OF MAU AIMA, ALLAHABAD.

*22. Mr. Zahur Ahmad: Is it a fact that during the last term there were five elected *panches* in the town area of Mau Aima, district Allahabad?

*23. Is the Government aware that they (*panches*) themselves elected their *sarpanch* and no objection or interference was made in their election of a *sarpanch*?

*24. Is it a fact that an election for five *panches* for the town area of Mau Aima took place on May 29, 1926?

*25. Is it a fact that on May 30, 1926 a meeting of the newly elected members of *panchayat* was held to elect a *sarpanch* and four members out of five attended the meeting on that date?

*26. Is it a fact that the meeting on May 30, 1926 was postponed owing to the absence of one of the members of *panchayat*, who in spite of notice did not attend?

*27. Is it a fact that another meeting was called on June 6, 1926 in order to elect a *sarpanch* as was done in the last term?

*28. Is it a fact that the town magistrate of Mau Aima three days before this meeting appointed the gentleman who remained absent from the meeting as *sarpanch*?

*29. Is it a fact that the town magistrate neither directed the *panchayat* to elect its *sarpanch* nor informed or consulted the *panches* before appointing the *sarpanch*?

*30. Is it a fact that the gentleman appointed as *sarpanch* does not know English at all?

*31. Is it a fact that he (appointed *sarpanch*) is a defeated candidate in the district board election held in December last from the same area in which Mau Aima is situated?

*32. Is it a fact that one of the *panches* is a graduate of Allahabad University of over five years' standing and the person nominated as *sarpanch* does not even know English?

*33. Is it a fact that three out of five *panches* had declared in writing that they would select the graduate member as their *sarpanch*?

*34. Is it a fact that the graduate member was also a member in the last term for a full period of three years?

*35. Will the Government be pleased to state under what authority and rule the nomination of *sarpanch* was made by the town magistrate of Mau Aima, district Allahabad, in the absence of the district magistrate of Allahabad who had left Allahabad two days before the election?

*36. Is it the intention of Government to declare the nomination of the *sarpanch* made by the town magistrate of Mau Aima as illegal and direct the *panchayat* to elect its own *sarpanch* as in the last term?

*37. Will the Government be pleased to state if it is a fact that this year a seat of nominated member was created in the town area of Mau Aima, district Allahabad, on the report of K. Prasad, Esq., town magistrate of Mau Aima, and that this seat was reserved for a weaver?

*38. Has the town magistrate acted with the consultation and approval of the Government in nominating a person of another caste and community?

*39. Is it a fact that Hindu zamindars, Banias and Khattris took part in voting and elected a zamindar of their bazar as their representative in the *panchayat* board by giving him their votes?

*40. Will the Government state how many tax-payers of depressed classes such as Telis, Kurmis and Kachhis are tax-payers in the town area of Mau Aima?

*41. Will the Government also state the amount of taxes they pay?

*42. Will the Government be pleased to state the reasons why a representative of those mentioned in question No. 40 was not nominated in accordance with the declared policy of the Government, i.e., to nominate a representative of the depressed classes?

Hon'ble Nawab Muhammad Yusuf: Inquiry has been made and the information is not yet available.

PLAGUE IN ALIGARH, MUTTRA AND AGRA DISTRICTS.

*43. **Rai Bahadur Babu Ram Nath Bhargava:** (a) Is the Government aware that Aligarh, Muttra and Agra districts have remained infected with plague during the last four years?

(b) Will the Government be pleased to state what steps have been taken to stop the spread of this disease in future?

*44. (a) Is the Government aware that Muttra being a pilgrim centre is a source of danger when infected with plague to the whole of India?

(b) Do Government intend to introduce district health scheme in this district?

* 45. Is it the intention of Government to apportion a handsome amount of money out of epidemic charges for Muttra city and Muttra district?

Hon'ble Rai Rajeshwar Bali : Inquiry has been made and the information is not yet available.

GRANTS TO PILGRIM CENTRES.

* 46. **Rai Bahadur Babu Ram Nath Bhargava :** (a) Will the Government be pleased to lay on the table a statement showing how the grants for special purposes to pilgrim centres have been spent during the last year?

(b) What amount was given to Muttra?

Hon'ble Rai Rajeshwar Bali : (a) The statement is laid on the table.

(b) Nothing.

(See Appendix A, page 837.)

* 47. **Rai Bahadur Babu Ram Nath Bhargava :** What are the proposals in regard to the disbursement of grants for the current year?

Hon'ble Rai Rajeshwar Bali : A statement of the allotments which have been made is placed on the table. The balance will be disbursed when applications are received and passed by the Board of Public Health.

(See Appendix B, page 837.)

SESSIONS COURT BUILDING, MUTTRA.

* 48. **Rai Bahadur Babu Ram Nath Bhargava :** (a) Is the Government aware that the building of the Sessions house at Muttra, which is now used for the purposes of the court of the sessions and subordinate judge who has permanently been posted there, is inadequate and there is no shed for the accommodation of the litigants, nor is there any room for the assessors?

(b) Do Government intend to remove this grievance and bring the necessity of providing sufficient accommodation for the aforesaid purposes to the notice of the Hon'ble High Court?

(c) Is it true that there is no shed or room for the accommodation of litigants close to the newly constructed court of the Mansif of Mahaban? Do Government intend to build one?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : (a) There is no room for assessors and shed for litigants. Government are not aware that the accommodation is inadequate in other respects.

(b) and (c) The High Court are already aware of the position and have allotted funds for the construction of a shed for witnesses. It is expected that the building will be completed during the current financial year.

NOMINATIONS FROM THE DEPRESSED CLASSES.

* 49. **Rai Bahadur Babu Ram Nath Bhargava :** (a) Will the Government be pleased to lay on the table a statement showing separately the depressed class or classes from which the persons were nominated as members of the municipal and district boards of the United Provinces and in the United Provinces Legislative Council during the last two elections?

(b) Is the Government aware that for the greater part the same persons and of the same depressed class are nominated each year as members in the boards and the Council who were nominated in the last few years?

(c) Will the Government be pleased to consider that in future when nominations are made the persons available from other depressed classes will be nominated as members of the boards and the Council and those who are nominated year to year be not re-nominated?

Hon'ble Nawab Muhammad Yusuf: (a) The Government do not propose to collect the information. It is known that the classes from which the members have been nominated on municipal and district boards include Lodh, Ahir, Teli, Murao, Kumhar, Chamar, carpenter, Kahar, Mallah, Kachhi, Mochi, Manjhi and Kalwar.

(b) This may be true in certain cases.

(c) The Government cannot bind themselves to any rigid scheme based on caste distinctions.

Khan Bahadur Mr. Muhammad Aslam Saifi: May I ask with regard to No. 48 whether dhoobies are also included?

Hon'ble Nawab Muhammad Yusuf: Yes.

Hon'ble Sir Sam O'Donnell: (a) and (b) The honourable member is referred to the Civil Lists.

(c) Nominations are not made by Government.

CO-OPTED MEMBER FOR LALITPUR TAHSIL.

* 50. **Khan Bahadur Shaikh Masud-uz-Zaman:** Is it a fact that the district board of Jhauasi has appointed a very old man who can hardly walk, is hard of hearing and can see with great difficulty as co-opted member for Lalitpur tahsil?

If so, are there special reasons for this selection, and what are they?

BAZAR OF MAUDAHA, HAMIRPUR.

* 51. **Khan Bahadur Shaikh Masud-uz-Zaman:** (a) Will the Government be pleased to state if the bazar of Maudaha, district Hamirpur, belongs to the Muhammadan zamindars of the place?

(b) Did four Muhammadans open their own shops in the bazar recently?

(c) Has the district magistrate recently ordered the removal of these shops of the Muhammadans alone from the bazar against the wishes of the owners? If so, is it a temporary measure only?

(d) What are the reasons for this order and under what authority did the district magistrate interfere in the affairs of a private bazar?

"DISTRICT BOARD, BANDA.

* 52. **Khan Bahadur Shaikh Masud-uz-Zaman:** (a) Is it a fact that no meeting of the district board of Banda was held from March 7 till May 30?

(b) If so, what were the reasons for this breach of the provisions of the Act?

(c) Was no business transacted by the Chairman during this interval?

(d) If any business was transacted, what was the nature of the business?

(e) Was any servant of the board removed, punished or any institution abolished?

(f) If so, under what authority did the chairman act?

(g) Were the names of certain old contractors removed from the list of approved contractors?

(h) If so, for what fault?

(i) Who are the new contractors now employed by the chairman?

* 53. If the answer to the foregoing question is in the affirmative, did the Government take any action against the chairman or ask for his explanation?

* 54. (a) Is it a fact that no appeals of the aggrieved servants of Banda district board or the applications of the contractors and other outsiders are allowed by the chairman to be put before the board, though they bear remarks and signatures of a large number of members of the board?

(b) How many such requisitions have hitherto been presented to the chairman?

(c) How many of them were put and discussed in the meeting of the board?

* 55. How many civil suits have been brought by the contractors against the district board, Banda? How many notices to file the suits in default of payment are pending? Were they ever discussed in the board?

* 56. (a) Was a notice issued by the chairman for holding a meeting of the district board, Banda, on May 30 at Naraini?

(b) How many miles is Naraini from the nearest railway station?

(c) How many miles is it from Banda?

(d) Did the chairman consult some of the members of the board on the point before fixing Naraini as the place of meeting?

* 57. (a) Was the meeting of the district board referred to in the previous question held on May 30 at Naraini or was it postponed for want of quorum?

(b) How many members went to Naraini to attend the meeting of May 30?

(c) If the meeting was postponed for want of quorum, when was the adjourned meeting held?

* 58. (a) Was the agenda of the meeting of May 30, as referred to in the two preceding questions, sent to members along with the notice of the meeting?

(b) If so, were the following items given in the agenda:—

(1) presentation of an address to Mrs. Sarojini Naidu, the president of the Indian National Congress,

(2) abolition of the hospital of Naraini?

(c) If not, were these things decided in the adjourned meeting?

* 59. (a) Is any inspection book kept at the office of the district board, Banda, for the members of the board or the members of the Council to write their notes?

(b) Does the chairman refuse to take any notice of an inspection note sent to him by any member of the district board or of the Council? How many times has the chairman himself inspected the office since his election?

(c) Is the secretary allowed to absent himself from the office while in the headquarters? Does he submit his programme to the chairman when going on tour?

Hon'ble Nawab Muhammad Yusuf: *50 to 59. Inquiry has been made and the information is not yet available.

Khan Bahadur Shaikh Masud-uz-Zaman : May I know when information is likely to be given ?

Hon'ble Nawab Muhammad Yusuf : I cannot say that—too many details are asked for.

Hon'ble the President : This cannot be within the cognizance of Government. Inquiry has been made, but they cannot say when the information will be received.

**KHAN SAHIB SAIYID MUHAMMAD ISMAIL, HONORARY
MAGISTRATE, HAMIRPUR.**

* 60. **Khan Bahadur Shaikh Masud-uz Zaman :** (a) Has the Government received a memorial of Khan Sahib Saiyid Muhammad Ismail, an honorary magistrate of Hamirpur ?

(b) What are his educational qualifications ?

(c) Does his term of office expire this year ? If so, is his term to be further extended ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : (a) Yes.

(b) and (c) The honourable member is referred to the answer given to starred question No. 48 of July 24, 1926.

(Copy of starred question No. 48 of July 24, 1926, and its answer.)

QUESTION.

How long has Khan Sahib Maulvi Muhammad Ismail been serving as honorary magistrate in the Hamirpur district ? What class of magisterial powers did he exercise ? What are his educational qualifications ?

Is it intended to withdraw these powers from him now, and, if so, why ?

ANSWER.

Nearly eight years. He exercised third class powers from July 2, 1918 to May 30, 1921, and second class powers from May 31, 1921 to May 30, 1926. He has passed the Middle Anglo-Vernacular examination and the Pleadership examination.

His term of office expired on May 31, 1926, and has not been extended as he is over 60 years of age, and owing to a recent severe attack of appendicitis from which he has only partially recovered he is no longer fit for active work as a magistrate. He is being made an honorary magistrate for life on the retired list.

THE LEE COMMISSION.

* 61. **Rai Sahib Lala Jagdish Prasad :** When does the Government intend to give effect to the recommendations of the Lee Commission in so far as they relate to provincial services ?

Hon'ble Sir Sam O'Donnell : As regards the United Provinces Civil Service the honourable member is referred to the answer to starred question No. 67 for June 29. The two appointments therein mentioned have since been notified. As regards the Police, certain recommendations have been made. As regards the Medical, Industries, Agriculture, Education, Forests and Public Works departments, the matter is either still under consideration or awaiting orders from above.

(Starred question No. 67 and the answer given to it on June 29, 1926, referred to in answer to starred question No. 29 for July 27, 1926.)

QUESTION.

Khan Bahadur Hafiz Hidayat Husain : How long do the Government expect to take to give full effect to the accepted recommendations of the Lee Commission that 20 per cent. of the superior posts should eventually be filled by recruitment from the provincial service ?

Will the Government be pleased to state the steps and the stages by which this recommendation will be carried out?

How long will it take to work up to the full percentage and what are the difficulties in the way of its being given effect to at an early date?

What has been the extent of the start made?

ANSWER.

Hon'ble Sir Sam O'Donnell : The programme accepted by the Secretary of State for India is that thirteen more posts should be listed in fifteen years, reckoning from April 1, 1924.

Notifications listing two more posts and making appointments to them are under issue.

APPEAL OF MINISTERIAL AND MENIAL SERVANTS OF CIVIL COURTS.

*62. **Rao Sahib Abdul Hameed Khan** : (a) What remedy is open to a ministerial or a menial servant of a civil court if an appeal presented by him has been withheld by a district judge beyond the scope of rule XXV of the rules promulgated by the Government of India in notification No. F-172/II—23, published in part I of the *Government Gazette*, dated July 12, 1924?

(b) Is he allowed to submit his appeal *direct* to the Government or to the appellate authority concerned?

*63. (a) Have all the powers enumerated in notification No. 213/II—61, published in Part I of the *Government Gazette*, dated January 16, 1926, page 7, been delegated to district judges?

(b) If yes, do they exercise the powers of suspension and dismissal under the notification or under the Civil Court Act (XXI of 1887) or under both?

(c) Who is the next higher authority to a district judge within the meaning of rule 2 in notification No. 214/II—61, published as above?

*64. (a) With reference to answer given to starred question asked by me in the Council session of August, 1925, and reproduced on page 339 of proceedings, volume XXV, will the Government be pleased to state if a ministerial officer or menial who thinks himself wronged by the promotion of a junior over his head under an order of a district judge is entitled to an appeal?

(b) If the reply be in the affirmative, under what rule is that permission given?

(c) If in the negative, what remedy is open to him?

(d) To what authority will such an appeal be preferred—whether to the High Court or to the local Government or to any other authority?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The honourable member asks for an interpretation of statutes and statutory rules. That is a matter for legal opinion, which Government are unable to give.

FOREIGN DRUGS.

*65. **Khan Bahadur Hafiz Hidayat Husain** : What is the value of the total import of foreign drugs into the United Provinces during the years 1923-24, 1924-25 and 1925-26?

Hon'ble Thakur Rajendra Singh: The figures are not available, as the registration of imports into this province was discontinued in 1923.

FOREIGN SCHOLARSHIPS.

*66. **Mr. H. David:** How many candidates for award of foreign scholarships were interviewed last April at the Council Chamber respectively from the following communities:—

- (a) Hindu,
- (b) Muhammadan,
- (c) Christian?

*67. Was any Christian selected, and, if not, in what did he fall below the mark? Who were the members of the selection board?

Hon'ble Rai Rajeshwar Bali: (a) Eight.

(b) Two.

(c) Two.

No Christian candidate was selected by the selection committee which recommended to Government those candidates who were in its opinion most suitable for award of scholarships. The members were—

- (1) The Director of Public Instruction (*Chairman*).
- (2) Khan Bahadur Maulvi Fasih-ud-din Sahib.
- (3) Dr. Ganesh Prasad.
- (4) Mr. N. A. Rust.
- (5) Dr. Bahl.

Mr. H. David: Was not one of the Indian Christian candidates a first class M. A. and a first class L. T.?

Hon'ble Rai Rajeshwar Bali: Not so far as I am aware.

Mr. H. David: Were any of the persons selected first class M. A. or L. T.?

Hon'ble Rai Rajeshwar Bali: Yes—I think so.

Mr. H. David: Will the Government please give me the names of any such?

Hon'ble the President: Notice should be given of a question like that. Did you ask for the names in your question?

Mr. H. David: The question arises out of the question on the paper.

Hon'ble the President: This does not arise from the answer given. Fresh notice must be given of the question if the honourable member wants the names.

Mr. H. David: Why was there no Indian Christian on the selection board?

Hon'ble Rai Rajeshwar Bali: There are already two Christians on the board.

Mr. H. David: I asked about Indian Christians.

Hon'ble Rai Rajeshwar Bali: Well, in a selection board one cannot represent every minority community.

Mr. H. David : Will you take them on any selection board ?

No answer.

NOMINATIONS OF INDIAN CHRISTIANS TO LOCAL BODIES.

*68. **Mr. H. David :** Has there been an increase or decrease in the number of Indian Christian representatives on (a) municipal boards and (b) district boards as now constituted compared to the previous period ?

Hon'ble Nawab Muhammad Yusuf : There has been an increase of one in the number of Indian Christians nominated to district boards, while the number on municipal boards has remained the same.

*69. **Mr. H. David :** Is it not a fact that no nomination was made for the Budaun municipality from among the Indian Christian community, unlike the previous period ?

Hon'ble Nawab Muhammad Yusuf : There was no nominated Indian Christian on the last board and there is none on the present board.

*70. **Mr. H. David :** Is it a fact that in place of a Christian representative, a representative from quite another community was made there ? Will the Government be pleased to explain the reason for such a change both at Budaun and Lucknow ?

Hon'ble Nawab Muhammad Yusuf : No Indian Christian was nominated on Lucknow and Budaun municipal boards. The Government appointed other persons whom they considered to be suitable.

*71. **Mr. H. David :** Will the Government be pleased to explain why representation of the Indian Christian community was not sought for at Agra, Cawnpore, Mirzapur, Moradabad, Meerut, Farrukhabad, Etah, Saharanpur, Almora and Naini Tal ?

Hon'ble Nawab Muhammad Yusuf : The Government did not think it necessary to seek Indian Christians for the boards in question.

Mr. H. David : Was there any Indian Christian on the Budaun municipal board ?

Hon'ble Nawab Muhammad Yusuf : The answer is there already. No.

Mr. H. David : May I say that that is not correct ?

Hon'ble the President : The honourable member is giving information.

Mr. H. David : I was saying that the information is not correct.

Hon'ble the President : This is not the time to correct the Minister.

SUB-INSPECTORS OF POLICE.

*J2. **Rao Sahib Abdul Hameed Khan :** Will the Government be pleased to state since when have the powers of dismissing the sub-inspectors of police been entrusted to the superintendents of police and under what order ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The power to dismiss sub-inspectors of police has not been entrusted to superintendents of police.

*73. **Rao Sahib Abdul Hameed Khan** : Will the Government be pleased to give the numbers of the permanent and probationary sub-inspectors of police, communalwise and districtwise, who have been dismissed by the superintendents of police after the Government order mentioned in the foregoing question ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Does not arise.

*74. **Rao Sahib Abdul Hameed Khan** : Does the number of dismissals after the new change exceed the number of dismissals of the time when sanction of the District Magistrate was to be obtained ? Will the Government be pleased to give figures of equal periods comparing the dismissals taking place previous to and after the order of the Government ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : By the " new change " the honourable member presumably means the change introduced in November, 1923, as a result of the recommendation of the Police Decentralization Committee whereby the superintendent of police is now required to forward departmental proceedings against sub-inspectors to the deputy inspector-general for orders of dismissal instead of passing orders of dismissal himself and obtaining the concurrence of the district magistrate as formerly. In 1922 before this change was made twelve sub-inspectors were dismissed ; the years 1923 and 1924 were transitional ; in 1925 when the new rule was in full operation the number of sub-inspectors dismissed was thirteen.

*75. **Rao Sahib Abdul Hameed Khan** : Will the Government be pleased to give the numbers of the prosecuting inspectors and sub-inspectors communalwise in each district ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Two statements are laid upon the honourable member's table.

(See Appendix C, page 838.)

SHAUKAT USMANI.

*76. **Rao Sahib Abdul Hameed Khan** : Has the illness of Shaukat Usmani come to the notice of the Government ? Have the reports of his illness been regularly forwarded to the Government of India ? And have the Government of India taken any action or issued any order ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes, he is suffering from slight colitis : his condition is not serious, and there has therefore been no occasion to keep the Government of India regularly informed of his health, nor for the Government of India to take any action.

WHEEL TAX, ROORKEE.

*77. **Rao Sahib Abdul Hameed Khan** : Is it a fact that the municipal committee of Roorkee collects the taxes for a whole year from the *ekka* and *tongawalas* who come in the annual *urs* of Piran Kalyar ? Does the Government intend to take any steps in getting this tax realized for the period of the fair only ?

Hon'ble Nawab Muhammad Yusuf : The municipal board grants licences for the period ending on March 31 next following, but charges only

half the fees for a licence taken after September 30. The Government do not propose to take any action. Any suggestion should be made to the municipal board in the first instance.

MADHO RAM, PROCESS-SERVER, SAHARANPUR JUDGESHIP.

* 78. **Khan Bahadur Mr. Muhammad Aslam Saifi :** (a) Is it a fact that Madho Ram, a process-server in Saharanpur judgeship, had submitted a complaint to the Sessions Judge of Saharanpur on July 13, 1925 ?

(b) Is it a fact that this was entrusted to the subordinate judge to be inquired into and that he submitted his report on December 15, 1925 ?

(c) Is it a fact that no order has been passed on it as yet ?

(d) Was this report put up before the district and sessions judge ?

(e) Will the Government be pleased to explain the reason of this delay ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : (a) Yes.

(b) Yes.

(c) No.

(d) Yes.

(e) The delay was due to the heavy judicial work in the court of the subordinate judge and to the fact that evidence was recorded at very great length.

SCRIPT OF PLAINTS IN HONORARY MUNSIF'S COURT, FARRUKHABAD.

* 79. **Lieut. Raja Durga Narayan Singh :** Is Munshi Muhammad Iqar Husain a member of the bench of honorary munsifs at Farrukhabad ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : No. The honourable member presumably refers to Munshi Muhammad Karrar Husain Khan, who is a member of the said bench.

* 80. **Lieut. Raja Durga Narayan Singh :** Does he insist on petitions or plaints being filed in his court in Urdu and not in Hindi ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : No.

* 81. **Lieut. Raja Durga Narayan Singh :** Does he insist on the plaintiffs filing a translation or copy of the plaints written in Hindi ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The honorary munsif does not read Hindi and therefore when sitting alone for non-contested cases he generally orders that Urdu translations of all Hindi petitions or plaints be furnished.

* 82. **Lieut. Raja Durga Narayan Singh :** Did the said Munshi Muhammad Iqar Husain order the plaintiff in case No. 346 of 1925 pending in his court to file a translation of the plaint in Urdu which was originally filed in Hindi ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Yes.

* 83. **Lieut. Raja Durga Narayan Singh :** Did he subsequently dismiss the suit for non-compliance of the aforesaid order ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The suit was dismissed for default: first because the plaintiff did not comply with

the order to furnish a translation of the plaint, and, secondly, because the plaintiff was absent.

* 84. **Lieut. Raja Durga Narayan Singh** : Do Government intend to issue orders to the said munsif not to pass such orders?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : No.

AUDITORS UNDER THE MUSALMAN WAQF ACT.

* 85. **Dr. Shafa'at Ahmad Khan** : Will the Government be pleased to lay on the table a statement showing the district courts which have not yet appointed any auditors under the Musalman Waqf Act of 1923?

Hon'ble Rai Rajeshwar Bali : The information has been called for but has not yet been received.

MEETINGS OF ADVISORY BOARDS.

* 86. **Dr. Shafa'at Ahmad Khan** : Will the Government be pleased to lay on the table a statement showing the number of meetings of all the advisory boards to which this Council elects representatives held this year?

Hon'ble Sir Sam O'Donnell : The information has been called for but has not yet been received.

MUNICIPAL BOARD, BANDA.

* 87. **Khan Bahadur Shaikh Masud-uz-Zaman** : (a) Have the posts of tax superintendent and the tax clerk in the Banda municipality been reduced under the budget proposals of 1926-27?

(b) Has the Commissioner sanctioned the budget yet?

(c) Has the board reduced the pay of the secretary to half and passed the budget by casting vote?

(d) Has the pay of any member of the staff been also reduced?

Hon'ble Nawab Muhammad Yusuf : (a) Yes.

(b) The Commissioner is not required under the Municipalities Act to sanction the budget, as Banda is not an indebted municipality.

(c) Yes.

(d) No.

UNSTARRED QUESTIONS.

REMISSION OF REVENUE IN BARWAN PARGANA.

1. **Rai Bahadur Thakur Mashal Singh** : Is it a fact that no suspensions or remissions of revenue or *tagavi* were made in the Barwan pargana in spite of a large number of applications therefor from the flood-stricken area?

Mr. H. A. Lane : No. Rupees 4,741 were remitted and Rs. 1,553 were suspended on account of land revenue and Rs. 9,048 were suspended on account of *tagavi*.

2. **Rai Bahadur Thakur Mashal Singh**: Is it a fact that in addition to the year's demand instalments of *tagavi* advances made in past years which fell due this year have been recovered without any concession having been made for the bad year?

Mr. H. A. Lane: The demand on account of *tagavi* advances made in past years was very small and no remissions or suspensions have been granted in respect of this demand.

3. **Rai Bahadur Thakur Mashal Singh**: Is it a fact that a police guard was deputed to help the revenue official in the collection of revenue and *tagavi* in the Barwan pargana?

Mr. H. A. Lane: On the report of the tahsildar that police assistance was required to guard the *tagavi* money which the special *tagavi* naib-tahsildar was collecting in pargana Barwan, which pargana is notorious for its bad characters, two constables of the civil police were deputed for ten days in the middle of May 1926 to guard the money and were thereafter withdrawn. The policemen were not meant to help in making collections and did not do so.

4. **Rai Bahadur Thakur Mashal Singh**: If the answer to the previous question be in the affirmative, will the Government be pleased to state the law or the rules under which police constables were deputed for collection work?

Mr. H. A. Lane: The question does not arise.

5. **Rai Bahadur Thakur Mashal Singh**: Is it a fact that the cattle of the men who did not owe anything to Government were put in the pounds along with the cattle of the debtors and defaulters?

Mr. H. A. Lane: No.

6. **Rai Bahadur Thakur Mashal Singh**: Is it a fact that a large number of tenants and petty zamindars of pargana Barwan have left the district on account of the terror of the police guard which accompanied the revenue officials?

Mr. H. A. Lane: No.

AUDIT-FEES OF MUNICIPAL BOARDS.

7. **Babu Narayan Prasad Arora**: (a) Will the Government be pleased to state if it is a fact that the Government has re-relieved the audit fees on municipal boards?

(b) Is it also a fact that these fees were once abolished and the boards were relieved of these fees by the Government?

(c) Why were they abolished and why have they been re-relieved?

(d) Have any municipal boards asked for the appointment of a whole-time auditor instead of test audit? If so, what action is it proposed to take on these requests?

Sir Ivo Elliott: An answer will be given at a later date.

UNITED PROVINCES MUNICIPALITIES ACT.

8. **Babu Narayan Prasad Arora**: When is the Government likely to publish proposals received from the various municipalities and bodies

and individuals for the proposed amendment of the United Provinces Municipalities Act?

Sir Ivo Elliott: The Government are unable to make any announcement until they have received and considered all the replies.

REPRESENTATION OF UNIVERSITIES IN LOCAL BOARDS.

9. **Babu Narayan Prasad Arora:** (a) Is it a fact that the Government has given the right of representation to the Aligarh University on the Aligarh municipality and district boards by allotting them a seat on each of these bodies? What other universities have been given this privilege?

(b) Do Government intend to consider and also grant the same privilege to the Benares University?

(c) Is the Government aware that the Benares Sanskrit institutions have no representative on the municipal and district boards? If so, do Government intend to grant one seat on the Benares municipal board and district board to the Sanskrit institutions?

Sir Ivo Elliott: (a) The Aligarh, Allahabad and Lucknow Universities have been constituted nominating bodies for the municipal board. No nominating bodies can be created under the District Boards Act and the universities have not been given the right of representation on the district board, but the provincial polling circle of the Hindu University excluding the municipal area has been formed a constituency for the purpose of electing a member to the Benares district board.

(b) No such suggestion has been formally made to Government and they do not propose to express an opinion.

(c) The Benares Sanskrit institutions are not as such empowered to nominate a representative to the municipal and district boards. No nominating bodies can be formed under the District Boards Act and no suggestion has been formally made to give representation to the Sanskrit institutions and the Government do not propose to express an opinion.

IRREGULARITY IN MEETINGS OF BENARES MUNICIPAL BOARD.

10. **Babu Narayan Prasad Arora:** Is it a fact that Mr. Douglas, I.C.S., an appointed member of the Benares municipal board, was not invited to attend the meetings of the municipal board, Benares, at which the present chairman was elected in December last and the present executive officer was appointed in January last? If so, why not? Was the legality of the meeting considered at the time of giving approval to the appointment of the present executive officer by the Government?

Sir Ivo Elliott: The Government have no definite information, but have considered the legality of the meeting.

REPRESENTATION OF BENARES STATE IN BENARES MUNICIPALITY.

11. **Babu Narayan Prasad Arora:** Is it a fact that the Government for some years have continuously appointed a representative of the Benares State as a member of the Benares municipal board? If so, why?

Sir Ivo Elliott: Yes. The appointment is desirable as the State and the municipality are jointly interested in many questions.

**APPEARANCE OF PLEADERS IN DEPUTY COMMISSIONER'S COURT,
JAUNSAAR-BARWAR.**

12. Lieut. Raja Durga Narayan Singh : Is it a fact that in Jaunsar-Barwar there is only one pleader practising on the civil side?

13. Will the Government be pleased to state whether any permission is necessary for pleaders before they can put in an appearance before the deputy commissioner vested with civil powers?

14. Does the Commissioner ever give permission in such cases?

15. Will the Government be pleased to lay on the table a copy of the rules on the point?

16. Have any applications for appearance on the civil side been refused by the deputy commissioner within the last three years? If so, how many and for what reasons?

17. What objection, if any, is there to a pleader or a vakil of the Allahabad High Court being permitted to appear before the deputy commissioner in civil cases?

Mr. R. L. Yorke : The information has been called for but has not yet been received.

SUB-DEPUTY INSPECTORS OF SCHOOLS.

18. Khan Bahadur Maulvi Fasih-ud-din : How many head masters of vernacular schools have been appointed as sub-deputy inspectors of schools since 1922, giving the number of non-Muslims and Muslims separately?

Kunwar Jagdish Prasad : Three—two non-Muslims and one Muslim.

19. Khan Bahadur Maulvi Fasih-ud-din : Are any vacancies in the cadre of sub-deputy inspectors reserved for head masters of vernacular schools and for those who are directly recruited? If so, what are the numbers, specifying the vacancies reserved for non-Muslims and Muslims, if any?

Kunwar Jagdish Prasad : The answer to the first part of the question is in the negative; the second part does not arise.

MEMBERS OF MUNICIPAL BOARD, MUSSOORIE.

20. Mr. Muhammad Ismail Ali Khan : Has the Government ever nominated any Indian or Indians to be members of the Mussoorie municipal board during the half a century and more of its existence? If so, how many and in what years? If not, then why not?

21. Will the Government be pleased to give, briefly, the reasons or considerations which have led it to nominate only non-Indians as members of the board, particularly during the last ten years?

22. Is it a fact that Government and its officers or advisers have practically decided that everyone of the three nominated memberships of the board should invariably be filled by non-Indians in future? If so, for what reasons or considerations?

23. Will the Government be pleased to furnish a statement for the period 1901 to 1926 showing—

- (i) the years in which the several succeeding boards were elected;
- (ii) the number of the *elected* and the *nominated* members in each such year;

- (iii) the number of Indians and non-Indians elected and nominated in each such year ;
- (iv) the number of Indian and non-Indian electors in each such year ;
- (v) the number of Indians and non-Indians in the population of the Mussoorie municipal area in each such year ?

24. Is it a fact that in the electoral roll of 1923, the proprietors (who elect six out of the eleven elected members of the board) numbered about 265, out of whom about 145 were Indians and about 120 non-Indians, and that they elected three Indians and three non-Indians ?

25. Is it also a fact that in the electoral roll of 1923, the general electors (who elect three out of the eleven elected members) numbered about 156, out of whom about 46 were Indians and about 110 were non-Indians, and they elected *one* Indian and *two* non-Indians ?

26. What were the reasons or considerations which led Government to fill the three nominated seats on the present board by non-Indians in and after 1923 ?

27. What are the qualifications which persons must possess before they are nominated by Government to be the members of the board and what are the principles by which Government is guided in making the said nominations ?

28. Will the Government be pleased to lay on the table a statement showing how many of its nominated members in each of the years 1923 to 1926 resigned their memberships and the reasons of their resigning, as also the number of total meetings held and the number of meetings attended by each of the nominated members during the incumbency of his office ?

29. How many of the present nominated members of the board live in Mussoorie all the year round ?

30. Has it occurred to Government that Muslims form an important minority in the population of Mussoorie by reason of their holding valuable property, the amount of taxes paid by them, and their interest as well as stake in the station ?

31. Has the Government considered, or is it prepared to consider, whether or not the Muslims get adequate representation on the board through the ~~mixed~~ election ?

32. Is Government prepared to give due regard to the claims of the important Muslim minority in making its nominations to the board to be elected in September, 1926 ?

Sir Ivo Elliot : Inquiry has been made and the information is not yet available.

THE AGRA TENANCY BILL.

CLAUSE 152.

152. (1) The produce of every holding in the cultivation of a tenant shall be deemed to be hypothecated for the rent payable in respect of such holding by such tenant and by every person other than a thekadar intermediate between such tenant and the *landlord* ; and, until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of a decree of a civil or revenue court, or otherwise.

(2) When an arrear of rent is due from a tenant the landholder may, in lieu of, or in addition to suing for the arrear as provided by this Act, recover the same by distress and sale of the produce of the holding in respect of which the arrear is due.

(3) Nothing in this section shall be deemed to affect the provisions of sections 2, 3 and 4 of the Bengal Indigo Contracts Regulation, 1823, or of section 11 of the Opium Act, 1857, or section 141 of the United Provinces Land Revenue Act, 1901.

Pandit Nanak Chand : I have some amendments to this clause, that is, in case it is not deleted then I want to move them.

Hon'ble the President : Certainly, because you are raising the whole issue of distraint. You may discuss it here. If that falls through, other amendments may be made. If carried, it will save time, because then the whole chapter will go.

Pandit Nanak Chand : I move, Sir, that the whole clause 152 be deleted.

Hon'ble the President : The honourable member does not want to delete sub-clause (1)? His principal objection is to distraint. He had better restrict his amendment to sub-clause (2). In sub-clause (1) there is no mention of the word distraint. It is only sub-clause (2) that mentions this, and I do not think it is his idea that hypothecation of crops should go?

Pandit Nanak Chand : May I then move my amendment to sub-clause (1)?

Hon'ble the President : Yes.

Pandit Nanak Chand : I beg to move that in line 4 between "tenant" and "and" "for the current agricultural year" be inserted.

If this amendment is incorporated, the sub-clause (1) of clause 152 will read as follows :—

"The produce of every holding in the cultivation of a tenant shall be deemed to be hypothecated for the rent payable in respect of such holding by such tenant for the current agricultural year and by every person other than a thekadar intermediate between such tenant and the landlord; and, until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of a decree of a civil or revenue court, or otherwise."

My object in moving this amendment is that the crops standing in the field should be hypothecated for the purpose of realizing rent due for the agricultural year during which the crop is standing. In this no question of distraint is involved.

Hon'ble Sir Sam O'Donnell : I think this a very unreasonable proposal. The landlord might be due rent both for the *rabi* and the *kharif* crops. If this amendment is carried it is only the *kharif* which can be distrained. In respect of rent due for the *rabi* there will be no remedy.

Pandit Nanak Chand : I have nothing more to add.

Question that between the words "tenant" and "and" the words "for the current agricultural year" be added in clause 152 (1) put and negatived.

Hon'ble the President : Here honourable members may discuss the whole principle of distraint and if that is decided by the House, no further discussion on this point can take place.

Pandit Nanak Chand : I move that the remaining portion of clause 152 . . .

Hon'ble the President : The honourable member had better confine himself to sub-clause (2).

Pandit Nanak Chand : I move that sub-clause (2) be deleted.

My object in moving this amendment is to raise a discussion on the question of the deletion of the provisions relating to distraint. I recognize, Sir, that in some cases these provisions regarding distraints have been used satisfactorily and have been of great help to zamindars in realizing their rents expeditiously and at nominal expense and have worked as quite salutary provision for the recovery of rent. Had the zamindars wanted to retain this power of distraint in addition to the remedy they already possessed under the present Act and which are again provided in this Bill, in the shape of recovery of rent by means of suit, this would have worked quite satisfactorily as it has worked so far, barring its abuse here and there. But the zamindars have been of opinion that this power of realizing rent through distraint is not helpful to them for recovery of rent. And with that object in view they have got incorporated in the Bill clause 81, which empowers a landholder to apply to the tahsildar for the issue of a notice to his tenant for payment of arrears of rent and if he is unable to pay the arrears within three months of the date of service of the notice, he is liable to ejectment. This, as they also consider, is a very effective and expeditious way of realizing the arrears of rent from the tenants. Moreover, as the zamindars themselves are of opinion that the right of distraint has not worked satisfactorily in the past, I do not think there will be any objection to the chapter on distraint being deleted. There are also certain defects in the procedure relating to distraint, which I will point out to the Council later if my present motion is not adopted. On a reference to clause 132 of the Bill the honourable members will find that an arrear of rent shall be recoverable by suit, or by distraint, or by notice through the tahsildar, in accordance with the provisions of the Act or in any one or more of such ways. It therefore appears that a zamindar has got several ways open to him to realize the arrears of rent. He can, for example, file an application for the issue of a notice to the tenant for the recovery of the arrears of rent, say for instance for three years from *rabi* 1332 to *kharij* 1335 or for two and a half years only. Again, the zamindar can distraint the *rabi* crop of 1335. This he may do before April 15, when the rent for the *rabi* crop will fall due, and on April 16 he may apply for another notice for the arrears of rent for *rabi* crop of 1335. The zamindar can also file a suit for any period for which arrears may be due to him. The result will be that on the one hand the crop of the tenant will be under distraint and simultaneously there will be two notices issued against him—one in respect of the arrears of rent due for the last

two and a half or three years and another for *rabi* 1335 through the tahsildar, and in addition to this, there may be a suit for arrears of rent. Thus it is possible to take all the three proceedings against the tenant at one and the same time for the recovery of the same rent and the poor tenant, if the zamindar so chooses, will be burdened with the cost of distraint, with the cost on account of the suit and with the cost of proceedings under an application for the issue of a notice. The tenant will be further confronted with another serious difficulty. If his crops were not distrained he would be in a position to get at least something to satisfy the demand of the zamindar by the sale-proceeds of the crop which while under distraint cannot be sold. When he finds that his crop has been distrained and he is required to pay up the arrears of rent through the service of a notice from the tahsildar, he will be tempted to raise frivolous objections against the proceedings. This will lead to an undesirable type of litigation between the zamindar and the tenant. When the zamindars have got the remedy of recovering rent by issuing a notice and also by suit and when they can under clause 132 take these two proceedings simultaneously if they choose, I think there is no need of retaining the clause of distraint. For these considerations I submit that the provision about distraint should be deleted.

Hon'ble Sir Sam O'Donnell: I am not sure what the amendment exactly is which the honourable member has moved. That is to say, whether he has moved the deletion of sub-clause (2). . .

Hon'ble the President: Yes. I want that the whole principle of distraint should be discussed under this amendment, so that we may not discuss the same thing over and over again.

Hon'ble Sir Sam O'Donnell: That being so, my answer is very simple. There are provisions for distraint almost identical with those in the Bill in Act II of 1901. There have been provisions for distraint in every Tenancy Act which has been passed in these provinces. Distraint provisions were in the Regulations of 1795. There are provisions for distraint in every Tenancy Act in every other province. I believe I am correct in saying that in every country in the world the landlord has the right of distraint against the tenant and it is very essential that he should have that right, because distraint may be the only method by which he can recover the whole or part of the arrears of rent due to him. The tenant may be bankrupt and it may be quite useless to sue him for arrears of rent, the only result of a suit being that the landlord would have to bear the cost of the suit himself. No doubt the landlord can eject the tenant. Even if he does so, however he will still be out of pocket to the extent of the arrears due to him, seeing that the tenant is a man from whom it is impossible to recover the arrear of rent. It is therefore essential that the landlord should also have the right to distrain the crops of the tenant. As to the allegation that distraint leads to an immense mass of litigation, there is no foundation whatsoever for it. The number of distraints is very large in the province and yet there were only 2,741 cases relating to distraints in 1923-24, both in Agra and Oudh.

Rai Bahadur Lala Mathura Prasad Mehrotra: I rise to oppose the motion of my honourable friend Pandit Nanak Chand. He has championed the cause of tenants in other amendments, but now he is pleading the cause of lawyers. The substance of his speech is that the zamindars should

[Rai Bahadur Lala Mathura Prasad Mehrotra.]

recover arrears of rent by means of filing suits in law courts. This, however, defeats the very object of the Bill, which is to decrease litigation. If his motion is accepted, there will be no difference between a landlord and a money-lender, because both will have to go to courts for recovery of their dues. The other reasons against this motion have already been stated by the Hon'ble the Finance Member.

Mr. Mukandi Lal : I rise to support the amendment, though I know that the cry will be in wilderness. Sub-clause (2) of clause 154 says:—"When an arrear of rent is due from a tenant, the landholder may, in lieu of, or in addition to, suing for the arrear as provided by this Act, recover the same by distress and sale of the produce of the holding in respect of which the arrear is due." The landlord has got the option of going to a law court for the purpose of realizing his dues from the tenant, and in addition to this remedy this clause proposes to give the power of distraint. It has been urged that if distraint is taken away it will lead to increased litigation; but no arguments have been adduced in support of that contention. It has not been pointed out to us what is the real virtue of distraint and whether it has worked for the benefit of the zamindar and the landlord, and if so to what extent. It has been said by my friend Rai Bahadur Lala Mathura Prasad Mehrotra that if the provision of distraint is deleted, there will be no difference between a landlord and a money-lender. To my mind, if we give this power of distraint to a zamindar, we put him in the position of a Kabulwala, who lends money and realizes it by force taking the law in his own hands. It has also been urged that all over India—and instances have been given even of European countries—though so far as I am aware I do not think there is any European country where there is the power of distraint given to the landlords, as a matter of fact, there are very few landlords there in the sense that we have here, this power of distraint has been given. At the same time, if we are to swear by other provinces, cannot we improve on the legislation of other provinces? If other provinces are prepared to give the power of distraint and to give the law into the hands of the landlord, let us do without it and let us show to other provinces that we have improved on the existing law.

Therefore, I give my whole-hearted support to this amendment, though I know what its fate will be.

Khan Bahadur Shaikh Masud-uz-Zaman : I do not know what is the point in defending the tenant who is a regular defaulter. I say this, because I think this section will apply only to those tenants who really want to deceive their landlord by evading the payment of their rent. They will do it when they have made up their mind to give up the land for some reason or other. Under the present Act, there is a provision that is applied only in cases where other remedies fail, and though it is a concurrent remedy with others, I think the remedy is applied only in cases where the other remedies have really failed. For instance, if the landlord sues for ejectment and the tenant does not pay and there is a likelihood that he will not pay, is it not fair that the rent which is due to the landlord should be realized from his ostensible property? And the ostensible property which the tenant has got at the time is the property on the land, that is the produce of the land. It is said that it will be very hard on the tenant if the landlord sues for his prior rents before the 16th of April and distrains the

produce for the rent due for the *rabi* of the future year. I think these two things cannot go together because the time which has been fixed is the time for the ripening of the *rabi* crops and therefore either the two sums of the rent due will be included together and the same amount of produce will be distrained in lieu of both the rents, that is the past rent and the present rent. Otherwise, it will not be possible at that time of the year that two distinct distraints may be levied on the same produce of land.

I do not know how it can be said that by this section the landlord gets the power to take the law into his own hands. In fact he cannot distrain unless he has proved his rent to be due and that will be by legal procedure. So in fact, it is something like distraint in execution of a decree and though it will be a permission to distrain before the decree has been passed, it will be only in lieu of the rent which has to be proved, and unless it is proved I do not know how it can be said that the zamindar will have the full power to take possession of the produce of the land. For these reasons I think there is no point whatever in trying to do away with this section.

Khan Bahadur Hafiz Hidayat Husain : I only want to reply to the legal arguments that have been advanced by my friend on my right (Mr. Mukandi Lal) and by Pandit Nanak Chand. My friend on my right has said that it is not right that a zamindar should be allowed to take the law into his own hands, which would be the case if power of distraint was given to him. He says there is no parallel for this in any law. Let me refer him to the English law which gives the inn-keeper a lien on the property of the guest; which means that as long as the bill of the inn-keeper is not paid so long the inn-keeper can retain the property of the guest. Then in our own profession—the profession of barristers and solicitors, my friend also hails from the same Inn of Court from which I do—we are authorized to keep the client's papers in our possession until the fee has been paid. The Indian Contract Act from section 109 onwards, gives the agent power to keep and enforce his lien on the property of the principal. For example, if the principal's money is in the hand of the agent and the agent has claim on the principal for his pay, say, the agent has power to retain so much money as would satisfy his demand.

It has been said by my friend Pandit Nanak Chand that in no other country of the world is such a law for the enforcement of landlord's claim on the tenant's crop in force. Let me tell him for his enlightenment that at least I know of two countries—Wales and Scotland—in which this law of distraint is in force today. I particularly wanted to hear from my friend Pandit Nanak Chand as to what fault he had to find with this power of distraint in the zamindars, when this power has been exercised so long and law in identical language is to be found in section 112 of Act X of 1859 and section 56 of Act VII of 1873 and 1881, and a similar provision is to be found in section 65 of the Bengal Tenancy Act. Not a word has been said as to whether these provisions have acted harshly on the tenant. I am not going to enter into the merits of the case; I only wanted to answer the legal arguments of my friend and I have shown that identical laws are to be found in other countries. And is not this law a spur to the tenants to pay, does not the small proprietor find it a most convenient method to get his rent and is not this a lesser evil than ejectment?

Dr. Zia-ud-din Ahmad : The underlying idea which my friend Pandit Nanak Chand had in his mind in moving this amendment and other similar amendments is that the property which he called zamindari

[Dr. Zia-ud-din Ahmad.]

property, in these provinces, should be reduced to German marks or Russian roubles. The zamindar may one day become a pauper and anxious to get rid of the property even after paying some penalty to the person who desires to take its possession. As regards this particular motion, my friend would probably realize that all the tenants are not of the same social status; some tenants have got property and a regular house in the villages, but other tenants have no property. They stay in one village today and shift to another village tomorrow. If the landlord goes to the court and gets a decree against those tenants who have got no permanent abode, then this decree will be waste paper and will have no value whatsoever. The zamindar will have to have recourse to distraint only in cases of those tenants who have got no permanent abode in the village and no property from which he can recover his rent and it is exceedingly desirable that this method ought to be provided for in the law in order to enable the landlord to recover money from such tenants as have got no fixed residence and no property of their own.

Rai Bahadur Thakur Hanuman Singh: The system of distraint has worked very well. I think those who are opposed to it do not know with what facility the landlords get their rent without putting their tenants out of pocket. The mover of the amendment has, in the beginning of his speech said that some zamindars are of the opinion that they can realize their rent through this process easily, but other zamindars are not satisfied. Well, I think there can be no zamindar who would not like to have this power for the recovery of rent due from his tenant. He has said that the procedure of recovering rent from tenants by application for ejectment or by suit is the more trustworthy and expeditious. I, on the other hand, think that there is no other procedure which is more expeditious than distraint. As soon as notice is issued by a zamindar the tenant pays his rent without any difficulty. I do not think that any record is kept either in the office of the zamindar or in the office of the Government, otherwise it would have been proved that lakhs of distraint cases happen throughout the length and breadth of the province and lakhs of rupees are realized from the tenants without any difficulty whatsoever. Then the honourable mover, in the course of his speech, has said that simultaneous action should not be allowed to be taken against a tenant. Well, I think, he is wrong. Simultaneous action cannot be taken. The zamindar will either proceed to distraint the crop or apply for his ejectment or sue tenant for the recovery of his rent. All the three processes will certainly not be taken up against any tenant simultaneously. I think I am correct in the interpretation of the provisions of the Act. It has been said that litigation will increase if the landlords will be empowered under the law to distraint crop. I think litigation will decrease, because when a notice is issued to the tenant and the tenant pays up there is no litigation. Thousands of cases will not go to the court if the provisions for distraint will form part of the Act. Therefore, it is very necessary that the distraint provisions should be incorporated in the Act so that litigation may be minimized.

Pandit Nanak Chand: I am sorry some of my friends have either consciously or unconsciously misunderstood me . . .

Hon'ble the President: I can not allow the honourable member to say that "honourable members consciously misunderstood him." I think that should not be used in the House.

Pandit Nanak Chand : Very well, Sir, I withdraw the word.

It appears that honourable members have understood me to mean that the retention of the provisions about distraint by itself would lead to litigation. What I wanted to make out and what I still maintain is that if the power is given to the zamindar to adopt more than one process at one and the same time it would lead to litigation. I might say that if on the one hand the zamindar distrains the crop and simultaneously gets a notice for ejectment issued through the tahsildar and in addition and at the same time sues for the arrears of rent, the result will be that it will compel the tenant to adopt dishonest methods. He will put up frivolous objections against the notice, so that it might become contested and it might have to be sent up for disposal to the sub-divisional officer concerned. It was in this light that I suggested that if all these powers were allowed to be exercised simultaneously they will lead to litigation. Then it was pointed out by the Hon'ble the Finance Member that provisions for distraint are to be found in every province and in every country and it was pointed out by my honourable friend Khan Bahadur Hafiz Hidayat Husain, that even in other professions and in other vocations of life this power of distraint is reserved to and exercised by certain persons. But the instances given by my friend Khan Bahadur Hafiz Hidayat Husain were not such as to convince me that the articles distrained in those cases, namely the papers of his client, were likely to be sold by their owner to raise money thereby to settle his accounts with his lawyer ; or that a guest putting up at an inn was likely to sell his luggage to pay up the bill of the inn-keeper. I, Sir, at the very beginning of my remarks when I moved this amendment, maintained that this provision has been helpful in expeditiously realizing rents, but it has been the contention of my zamindar friends that this provision did not work satisfactorily and that it was necessary to arm them with the power of ejectment by notice. The Hon'ble the Finance Member has not pointed out in how many provinces and in how many countries this provision of ejectment or notice prevails. The conditions change as you introduce new provisions into a Bill. If my zamindar friends contend that the provision for notice is necessary which they have got incorporated in this Bill on the contention that this power of distraint was not enough and was not satisfactory, then this provision should at once go out of this Bill. It was pointed out by the Hon'ble the Finance Member as to what remedy the zamindar can have against a tenant who is otherwise bankrupt and who does not possess anything but the standing crops. I may point out to him that the zamindar will still be armed with the power of suing him in court for the arrears of rent and in that proceeding he can apply for the attachment of this very crop on application for " qurqi qabl az faisla," and I am sure that no court will reject such an application. No member of this honourable House has even attempted to meet my contention that giving the zamindar the power to adopt several remedies of realizing rent at one and the same time will mean a serious saddling of the tenant with costs. It might mean that all these processes taken together might be enforced not for the recovery of rent but for the real object of ejecting the tenant. I have nothing more to add and I hope that the honourable members will still see their way to accept this amendment.

Hon'ble Sir Sam O'Donnell : There are only two points to which I need refer. The honourable member for Bulandshahr asked in what other countries the landlord has the right to eject his tenant for arrears of rent. As far as I know, he has that right in every country.

Pandit Nanak Chand : I said " by notice."

Hon'ble Sir Sam O'Donnell : That is simply a matter of procedure. I daresay there are countries in which this is done by notice. But that is essentially a matter of procedure and not of principle. Secondly, the honourable member said that the landlord can sue the tenant for arrears of rent, and that when these arrears are decreed, he can apply for attachment of the crop.

Pandit Nanak Chand : I said that he could apply for attachment of the crop before the decree was passed.

Hon'ble Sir Sam O'Donnell : He can apply before the decree of passed, but suppose the crop disappears in the interval, what is the use of applying for attachment of property if there are no crops on the land? What is there to prevent the tenant, when a suit is going to be filed, from selling the crop at once?

Hon'ble the President : The amendment is that sub-clause (2) of clause 152 be omitted. I shall deviate from my usual practice of putting the question and put this in a different form. Instead of putting the question in the form that the sub-clause stand part, I shall rather put it in the form that sub-clause (2) be deleted, for if once the Council agrees that sub-clause (2) stand part, further amendments to that sub-clause cannot be discussed and I notice that there are other amendments to the sub-clause. Therefore I shall put it in this different form.

Question, that clause 152 be deleted, put and negatived.

Pandit Nanak Chand : I move that in line 2 of clause 152, sub-clause (2) the words "or in addition to" be deleted. If this amendment is accepted, the sub-clause will read as follows :—

Hon'ble the President : Everybody knows how the sub-clause will read. The honourable member had better advance his arguments.

Pandit Nanak Chand : This will mean that the landlord will be empowered either to sue for the arrears of rent in court or, if he thinks that it will be to his advantage, to distrain the crop and realize the rent by distraint. I have already pointed out in my speech in connexion with my previous amendment that where simultaneous proceedings are taken by the zamindar against the tenant they will operate very harshly on the tenant and will undoubtedly saddle him with costs of the various proceedings. I wish that the zamindars should be given the option of adopting one or the other of the two methods or rather one of the two processes that they are allowed to take against the tenant, that is to say, if they want to distrain the crop, they may not sue unless it was to recover any amount which still remains due from the tenant after the sale-proceeds of the distrained crops have been taken into account, or if they want to sue, they may not distrain the crop, but may get the crop attached by the court if there is a likelihood of its being removed.

Hon'ble Sir Sam O'Donnell : Clause 152, sub-clause (2) does not say that the landlord may recover twice over the amount of rent due to him. It simply says—its meaning is—that he may recover whatever he can by distraint and if there is any balance over, he may recover or try to recover that by suit. What could be more reasonable? If after distraining

the crop and having it sold a balance still remains due to the landlord, why should he not be entitled to sue for it?

Question, that the words in line 2 "or in addition to" stand part of the clause, put and agreed to.

Question, that clause 152 stand part of the Bill, put and agreed to.

CLAUSE 153.

When distraint not allowed. **153.** (1) Notwithstanding anything in the last preceding section, no distraint shall be made—

- (a) by a co-sharer who is not entitled to collect the whole of the rent from a tenant;
 - (b) by a landholder who has covenanted not to distrain;
 - (c) by a landholder of any produce, of the whole or any portion of which a previous distraint has been made by him;
 - (d) in respect of any arrear which has been due for a longer period than one year;
 - (e) in respect of any arrear for which security has been accepted by the landholder;
 - (f) in respect of any arrear of rent of which the payment has been remitted or suspended under section 73;
- and no distraint shall be made—
- (g) by an agent who is not expressly authorized by power-of-attorney in that behalf;
 - (h) by a servant of a person empowered to distrain, unless he has a written authority to distrain.

Hon'ble Sir Sam O'Donnell: I beg to move that "(1)" be omitted after "153" in line 1 of clause 153. It is a purely formal amendment.

Question, that "(i)" be omitted after "153" in line 1 of clause 153, put and agreed to.

Pandit Nanak Chand: I beg to move that in line 2 of sub-clause (d) of clause 153 after the words "one year" the following words be inserted:—

"including the instalment due for standing crop."

If this amendment is incorporated, clause (d) will read as follows:—

"(d) in respect of any arrear which has been due for a longer period than one year including the instalment due for standing crop."

I want to make it clear that in no case a crop shall be distrained for dues for more than one year. If this is not made clear then it will be possible for a zamindar to distrain the standing crop for the arrears for the previous year and when in a few days the rent for the standing crop becomes due he might distrain it over again to recover the rent for third crops as well, viz., for a year and a half. If this is made clear that this one year will include the instalment due for the standing crop then it will not be possible for the zamindar to distrain it for more than one year, which I think is the intention of this provision.

Hon'ble Sir Sam O'Donnell: The honourable member's explanation of his amendment seems to me to be a case of *obscurum per obscurius*. When we saw this amendment, none of us could understand what it

[Hon'ble Sir Sam O'Donnell.]

meant. Now that we have listened to the honourable member's explanation, we are still in the dark. The clause as it stands is perfectly clear; it says "in respect of any arrear which has been due for a longer period than one year." We cannot imagine any other form of wording which can make the meaning clearer and as to the honourable member's amendment, I can only say that none of us are able to attach any meaning whatever to it.

Question, that in sub-clause (d) of clause 153, line 2, the words "including the instalment due for standing crop" be inserted after the words "one year," put and negatived.

Question, that clause 153 stand part of the Bill, put and agreed to.

CLAUSE 154.

What may be dis- **154.** (1) The landholder shall be entitled to
trained. distrain.

- (a) any crops or other products of the earth standing or ungathered on the holding;
- (b) any crop or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or in a homestead.
- (2) The landholder shall not be entitled to distrain--
 - (a) any crops or other products more than thirty days before maturity;
 - (b) any crops or other products after they have been stored by the tenant;
 - (c) any other property whatsoever.

Procedure

Rai Sahib Lala Jagdish Prasad: I move that in line one of clause 154 (1) (b) for the word "crop" the word "crops" be substituted.

I think that the word "crop" is a misprint and it ought to be replaced by the word "crops" as it is the word "crops" that occurs in the other clauses and sub-clauses of the Bill.

Hon'ble Sir Sam O'Donnell: I accept this amendment. That is a typographical mistake in the Bill.

Question that in line one of clause 154 (1) (b) the word "crops" be substituted for "crop" put and agreed to.

Question, that clause 154 stand part of the Bill, put and agreed to.

CLAUSE 155.

155. (1) Before or at the time when a distraint is made the distrainer shall serve on the defaulter a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

(2) The demand and account shall be dated and signed by the distrainer, and shall, if practicable, be served personally on the defaulter; or, if he cannot be found, shall be affixed to his usual place of residence.

Mr. Mukandi Lal. I beg to move that before the word "before" in line 1 of sub-clause (1) of clause 155 the words "fifteen days" be inserted.

My intention in moving this amendment is to give a 15 days' notice to the tenant and I think I am following the ordinary course and I am not asking for an extraordinarily long period of time during which it will be hard on the zamindar to wait and he can afford to wait for 15 days. I am only asking for 15 days' notice before the time when a distraint is made.

Hon'ble Sir Sam O'Donnell: The honourable member has said that this amendment will cause no inconvenience to the landlord. It is quite obvious that it will cause very serious inconvenience because if a notice of 15 days is given before the distraint is made there will be no crop on the land.

Question, that the words "fifteen days" be inserted before the word "before," put and negatived.

Mr. Mukandi Lal: I beg to move that the words "if practicable" in line 2 of sub-clause (2) of clause 155 be deleted.

I do not think that there is any necessity to give any loophole to make it practicable and impracticable and I therefore think that there is sufficient precaution given and there is no necessity of having the words "if practicable"; that is to say, nothing can be said to be practicable or impracticable, and therefore I think that the words "if practicable" be deleted and we should stick to the legal words that are in the remaining lines of sub-clause (2).

Hon'ble Sir Sam O'Donnell: The words "if practicable" should be inserted, because sometimes it may be very difficult to serve a notice. The tenant might not be there; he might take steps to keep away.

Mr. Mukandi Lal: I think the Hon'ble the Finance Member has overlooked the second part of the clause. It says that the demand and account shall be served personally on the defaulter; or, if he cannot be found, shall be affixed to his usual place of residence. I think that it is quite enough and there is no necessity of having any other qualifying words. It may be fixed on his residence and his residence can always be traced though he himself be away.

Hon'ble Sir Sam O'Donnell: I think that if the words 'if practicable' were left out the courts might have some difficulty in interpreting the clause. It might appear that the first part was contradicted by the second part.

Question, that the words "if practicable" stand part of the clause, put and agreed to.

Question, that clause 155 stand part of the Bill, put and agreed to.

CLAUSES 156, 157, 158, 159 AND 160.

Question, that clauses 156, 157, 158, 159 and 160, stand part of the Bill, put and agreed to.

CLAUSE 161.

161. (1) Within seven days from the time of making the distraint, the distrainer may apply to the proper officer, hereinafter called the sale-officer, for sale of the property specified in the list of description filed under section 156.

(2) If no such application is made, the crops or products shall be released from distraint.

Pandit Nanak Chand : I beg to move that in sub-clause (1) of clause 161 for the words 'proper officer' the word 'tahsildar' be substituted and the words "hereinafter called the sale-officer," be deleted.

Hon'ble the President : Your amendment will then be that for the words 'proper officer, hereinafter called the sale-officer' the word 'tahsildar' be substituted.

Pandit Nanak Chand : Yes, Sir, at present the qurq-amin is a sale-officer and he is very often on the move in connexion with the discharge of his duties, he does not keep any register as to the date of receipt of those applications for distraint and it very often happens that these applications are not sent to the qurq-amin within the prescribed time. Sometimes these applications are handed to the qurq-amin after the expiry of the period of one week and as he does not keep any register of these applications in regular order, and it is possible for him to admit the same as within time. Very often when the zamindar or his agent goes to give this application to the qurq-amin he is found to be on tour. It will be much better if the zamindar goes to the tahsil and puts in this application where it may be registered and then forwarded to the qurq-amin for disposal.

Hon'ble Sir Sam O'Donnell : If the honourable member will look at page 386 of Agarwala's edition of the Tenancy Act, he will find in section 128 :—"The sale-officer shall be the qurq-amin, and in his absence the application and fees may be received by the officer in charge of the headquarters office of the tahsil, who shall transmit the application to the qurq-amin." This is a notification dated April 11, 1902. I really cannot see any reason for a change and, on the other hand, the amendment seems to be open to the very strong objection that it will impose an unnecessary amount of petty work on the tahsildar. If the qurq-amin is not there, the tahsildar can take the notice.

Question, that the words in the clause stand part, put and agreed to.

CLAUSES 161 TO 166.

Question, that clauses 161 to 166, stand part of the Bill, put and agreed to.

CLAUSE 167.

167. If, on the property being put up for sale, fair price in the estimation of the sale-officer is not offered for it, and if the defaulter or cultivator applies to have the sale postponed until the next day, or, if a market is held near the place of sale, next market-day, the sale shall be postponed until such day, and shall be then completed, whatever price may be offered for the property.

Pandit Nanak Chand : I move, Sir, that the following be added to clause 167 :—"The sale shall be confirmed when it is approved by the tahsildar."

The object of this amendment is that at present sometimes the sale price is very low and the sale is confirmed by the sale-officer to the detriment of

the tenant. It will prevent malpractices and collusion on behalf of the qurq-amin and the purchaser at the sale, if the sales are confirmed by a more responsible officer, namely, the tahsildar.

Hon'ble Sir Sam O'Donnell : I see no necessity whatever for this amendment. The tenant has a remedy after the sale under clause 178.

Question, that the words "The sale shall be confirmed when it is approved by the tahsildar" be added, put and negatived.

Question, that clause 167, stand part of the Bill, put and agreed to.

CLAUSES 168, 169 AND 170.

Question, that clauses 168, 169 and 170 stand part of the Bill, put and agreed to.

CLAUSE 171.

171. (1) From the proceeds of every sale of distrained property under this Act, the sale-officer shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall remit the amount so deducted to the tahsildar.

(2) He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distraint, and of the issue of the notice and proclamation of sale prescribed in section 164 to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

(3) The remainder shall be applied to the discharge of the arrear for which the distraint was made.

(4) The surplus (if any) shall be delivered to the person whose property has been sold.

Babu Nemi Saran : I beg to move that in line 4 after " rupee " add " subject to a maximum of six rupees."

Sub-clause (1) of clause 171 says, that the sale-officer shall make a deduction at the rate of one anna per rupee on account of the cost of the sale." As I know from my own personal experience, and also there has been a grievance of the tenants which they have many times voiced in more ways than one, this present provision acts very hardly on them. For instance, if the distraint is made for say Rs. 300 then the tenant has got to pay the costs of the sale, about Rs. 19. I want by my amendment to fix a maximum to this cost of sale at Rs. 6, which I think is a very reasonable amount and Government should not try to impose a tax on a tenant who by his misfortune might have fallen in arrears. So I appeal to the Government to accept this amendment.

Hon ble Sir Sam O'Donnell : I do not think that a deduction of one anna in the rupee is excessive. It is a charge only of six per cent. It must be remembered that the qurq-amin's salary has to be paid. In addition to this his travelling allowance has to be paid, and he might have to travel a considerable distance to hold a sale. This charge of six per cent. is the old charge and is certainly not excessive.

Babu Nemi Saran : In this connexion I agree that there should be some charge, levied on the defaulter, but my limit of Rs. 6 is a sufficient charge, for a qurq-amin has to do the same work for a distraint of Rs. 100

[Babu Nemi Saran.]

as for one of Rs. 500, and I think more than Rs. 6 is not necessary to cover the expenses, if actual expenses are taken into consideration. It is only a question of a little relief to the tenant who is in bad circumstances. I can only appeal to the Government and I hope they will accept it, and I appeal also to the zamindars that this is not against their interests, but only a tax which Government need not levy from tenants who are badly off. The scale is neither necessary nor equitable. In civil court decrees also there is a fixed maximum to sale expenses from the sale proceeds and there is no reason why there should not be one in this case also.

Hon'ble Sir Sam O'Donnell : I daresay that Rs. 6 would cover the cost in the case of quite a number of sales and distraints, but in cases of distraint for substantial arrears Rs. 6 might not cover the cost, and I really do not see why Government should be the loser in the matter. The honourable member has taken the ingenuous line of saying that this will benefit the tenants and does not come out of the landlord's pocket and therefore zamindars should be generous at the expense of Government. I am sure that argument cannot appeal to the zamindars. After all, Government represents the whole community and if Government loses money more money will have to be raised by taxation.

Question put, that the above words be inserted.

The House divided : Ayes, 21 ; Noes, 42.

Ayes.

Babu Narayan Prasad Arora.
Babu Mohan Lal Saksena.
Babu Jai Narayan Chaudhri.
Thakur Manjit Singh Rathor.
Raj Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.

Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Sri Krishna Dutt Paliwal.
2nd Lieut. Sahibzada Ravi Partap Narayan Singh, Raj Bahadur.
Bhaya Hanumat Prasad Singh.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Babu Ram Chandra Sinha.
Rao Sahib Abdul Hameed Khan.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. B. L. Yorke.
Mr. E. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.

Babu Khem Chand.
Raj Bahadur Babu Ram Nath Bhargava.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Raj Sahib Babu Dip Narayan Roy.
Raj Bahadur Thakur Hanuman Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Mr. Ashiq Hussain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Question, that clause 171 stand part of the Bill, put and agreed to.

CLAUSES 172, 173 AND 174.

Question, that clauses 172, 173 and 174 stand part of the Bill, put and agreed to.

CLAUSE 175.

175. (1) If sale has not taken place under section 165 or section 169, any person whose property has been distrained may bring a suit to contest the distraint, provided that, if notice has been served on the plaintiff under sub-section (1) or sub-section (2) of section 164, he must institute his suit within fifteen days from the receipt of the notice.

(2) If a suit is instituted under sub-section (1), the court shall send to the sale-officer, or, if so requested, shall deliver to the plaintiff a certificate of the institution of such suit; and on such certificate being received by, or presented to, the sale officer before sale has taken place, he shall suspend the sale.

(3) In a suit to contest a distraint, the distrainer shall be required to prove the amount of the arrear for which the distraint was made.

(4) If the plaintiff in a suit under this section is the defaulter or the cultivator, and the demand of the distrainer, or any part thereof, is found to be due, the court shall make a decree for the amount in favour of the distrainer, and such amount shall be recovered from the property as provided in section 177.

(5) If the distraint is adjudged to be vexatious or groundless, the court, besides directing the release of the distrained property, may, on the application of the plaintiff, award to him such compensation as the circumstances of the case may require.

Pandit Nanak Chand: I beg to move that in line (3) between "distrained" and "may" "or whose rights are affected by distraint" be inserted.

This is to provide for cases where a tenant might have sub-let his holding or a portion of his holding to a sub-tenant and the crop of the sub-tenant is distrained by the zamindar. If the clause is allowed to stand as it is, then the sub-tenant will be entitled to bring a suit to contest the distraint of his crop, but the tenant will not be so entitled. It is quite possible that the zamindar might have distrained the crop of the sub-tenant for an amount which might be in excess of the amount really due from the tenant. The sub-tenant might pay the amount claimed by the zamindar and might hand over the balance to his tenant-in-chief. For example, suppose a sub-tenant has taken a holding or a portion of a holding of, say Rs. 175 per annum. The zamindar has to recover Rs. 100. But by mistake or on account of some other reason he distrains the property for Rs. 150. The sub-tenant pays Rs. 150 to the zamindar and offers Rs. 25 to his landlord, i.e. the tenant-in-chief. He is not interested in suing the zamindar for the recovery of Rs. 50 which was not due from his tenant-in-chief and was unduly recovered from him. But the tenant-in-chief is interested in suing for that amount. If the words which I seek to incorporate by this amendment are inserted in the clause, then it will enable the tenant as well as the sub-tenant to sue the landlord for defective distraint.

Hon'ble Sir Sam O'Donnell: I find great difficulty in following the honourable member's arguments. This happened on some previous

[Hon'ble Sir Sam O'Donnell.]

occasions also. But I may point out that it is also open to a person whose crops have been distrained to contest the distraint prior to the sale. If Rs. 100 is due to the landlord and the landlord distrains for Rs. 150 there is nothing to prevent the person whose crops have been distrained from contesting the distraint on that ground. The honourable member for Bulandshahr will extend the right to any person whose rights are affected by the distraint. That is an extremely vague clause and very objectionable. A tenant or a sub-tenant may put up a man of straw to prefer a preposterous claim against the landlord and the landlord would have to contest the claim of the man of straw. I think there is ample provision for safeguarding the tenant and the sub-tenant in the Bill itself. For example, there is clause 180 which says: "When an arrear of rent is realized from a cultivator by proceedings in distraint by any person other than his immediate landholder, he shall be entitled to deduct the amount so realized from any rent payable by him to such landholder." It also says: "In lieu of deducting any such amount so realized the sub-tenant shall be entitled to institute a suit for the recovery of the same." Thus there is ample protection both for the tenant and the sub-tenant in the Bill as it stands.

Dr. Zia-ud-din Ahmad: This is a very important amendment, and if accepted, will practically nullify the whole chapter dealing with distraint. The honourable mover says that any person interested in the holding may bring a suit. The person interested may be a money-lender or a creditor of the tenant. He may even be a relation of the tenant. Now, all these persons will try to have the distraint stopped, which will indeed be very hard on the landlord. Therefore, I think, the amendment should be rejected.

Pandit Nanak Chand: It has been pointed out by the Hon'ble the Finance Member that it will be open to the person whose crop is distrained to file a suit to contest the distraint. In this connexion I wish to submit that the crop distrained will be that of the sub-tenant, and not of the tenant-in-chief, and there will be no remedy open to the tenant to contest the distraint. The sub-tenant is entitled under clause 180(1) to deduct the amount realized from any rent payable by him to his landholder, namely the tenant-in-chief.

Question, that the above words be inserted, put and negatived.

Question, that clause 175 stand part of the Bill, put and agreed to.

Question, that clauses 176 and 177 stand part of the Bill, put and agreed to.

CLAUSE 178.

178. If a person whose property has been distrained has not brought a suit to contest the distraint as provided by section 175, and his property is sold, he may, nevertheless, institute a suit to recover compensation for such distraint and sale.

Persons not suing in time to save property from sale may sue for compensation.

Bhaya Hanumat Prasad Singh: I beg to move that clause 178 be deleted.

This clause, as it stands in the Bill, is extremely detrimental both to the interests of the tenant and the landlord. From the landlord's

point of view it will give rise to litigation, while the tenant will also find himself involved in ruinous litigation. As we all know, the tenants are generally in pecuniary embarrassment and in their best interest we should not open the way for further and further litigation. The clause says that a person whose crop was distrained and sold may institute a suit to recover compensation. The foregoing clauses give the tenant sufficient time to file a suit against the landlord for wrongful distraint. If the tenant fails to file a suit within the time allowed by the foregoing clauses for wrongful distraint, it is simply waste of time and money to give him another opportunity to sue the landlord for compensation after the sale has been effected. For these reasons, I move that clause 178 should be deleted.

Hon'ble Sir Sam O'Donnell : I think that the honourable member who has moved this amendment is under the impression that clause 178 is a new provision. That is not so. Clause 178 merely reproduces verbatim section 145 of the present Act and section 145 of the present Act corresponds to section 85 of the Rent Act of 1881. Therefore, it is a very old provision, and the reason why it is necessary to give the tenant this right to bring a suit is that he might have been absent when the distraint was made, or that he might have been prevented by illness from contesting the distraint. In the circumstances it would be very hard on him if he is not allowed to bring a suit afterwards.

Khan Bahadur Mr. Muhammad Ismail : It is perfectly true that it is an old provision. Nonetheless, the amendment proposed by the honourable mover is decidedly an improvement. Under the foregoing clauses the tenant has an opportunity to contest the distraint if the distraint is wrong or the amount claimed is in excess of what is due. He gets reasonable time to file a suit between the attachment and the sale. If he, however, chooses to sleep over that right, he has himself to blame for it. The policy of the Bill should not be to goad a tenant to go to court and to fight out cases where there is no justification for it. What happens in the civil courts. Suppose there is a case worth a lakh or more. When a man has been properly served with a notice, he has an opportunity to defend the case. If he does not do so, the decision of the court is final unless he proves want of service. We have a provision in the Act that a tenant cannot go away without leaving somebody in charge of his holding who will be responsible for the payment of rent. You will find only one in a million who actually abandons the holding and does not leave somebody to look after it. I submit that the tenant will always know that his crop was being distrained. If you have the provision as in clause 178, it might happen that the village barrister will induce the tenant to file a belated suit as the latter has very little to lose. In my opinion there is no reason to give the tenant repeated opportunities to raise objections in the matter of distraints.

Khan Bahadur Shaikh Masud-uz-Zaman : Although it has been admitted that the present Bill is very ill-drafted, yet when it is pointed out that a certain thing is wrong in it, it is said that it exists in the old Act. I do not know why a certain section of the old Act, when it has proved an absolute failure, should continue. In this particular clause, namely clause 178, there ought to be some time-limit for the tenant to claim compensation. There are so many remedies for a tenant who has been wrongfully treated to get redress. I do not see why a further chance

[Khan Bahadur Shaikh Masud-uz-Zaman.]

should be given to the professional tout—a class which is rapidly growing to the disadvantage of the landlords and the tenants—to enable him to instigate the tenant to file a number of cases and consequently increase litigation. I think that was the object of the mover of the amendment, and it is reasonable that this provision should go out: it is useless and gives opportunity to people—I mean professional touts—to create litigation and incite poor tenants to be on bad terms with their landlords.

Hon'ble Sir Sam O'Donnell : I have reason to believe that a slight modification of the clause will compromise the matter.

Hon'ble the President : Will the Hon'ble the Finance Member kindly have an amendment moved by another honourable member ?

Hon'ble Mr. R. Burn : I move that in clause 178 for the words "has not brought" the words "is prevented by any sufficient cause from bringing" be substituted. I believe that this will meet with the wishes of the House.

Pandit Govind Ballabh Pant : I regret that I am unable to accept the clause in the light of the amendment moved by the Senior Member of the Board of Revenue. Honourable members who have seen the schedule must have noticed that the period prescribed for the institution of such a suit is only two months from the date of the sale of the property. A person whose property has been sold away cannot be expected to indulge in the luxury of filing a frivolous suit with a view to harass his landlord within two months of the sale of his crops, which in ordinary cases constitute the whole of his property. My friend the honourable member for Gorakhpur has referred to the procedure that obtains in civil courts. In civil courts we know that persons who raise objections, whether an inquiry is made into the claim by the courts in the execution of the decree or not after the order is passed, are competent to institute a suit for questioning that order. Certainly the resources of a tenant are much more restricted than those who fight cases in civil courts. I have not heard a single word from honourable members suggesting that this clause has been so far used for harassing the landlords. It is not a new thing; it has been in the Bill for the last 45 years at least, and not a single instance has been quoted in which the clause has been utilized by anybody for the purpose of persecution or torture. I submit that the tenant, if he institutes a suit, has to pay the penalty in the form of costs, and wherever frivolous litigation takes place some sort of penalty has to be paid by the man concerned. Here you are taking away the right of the person simply because he did not raise objection within 15 days. The law of distraint is most onerous and stringent, and I should say one of those laws which belong to an age less civilized than ours. Honourable members must be aware that recently a Bill was introduced in the Bengal Council by the Government of Bengal with a view to repeal all provisions in the Bengal Tenancy Act relating to distraint. So that in this age a remedy of this character to which the landlord can resort at his own expense is out of date. It must be remembered that in this Bill a further provision has been made to enable the landlord to realize his rent in a summary manner by simply putting an application for the ejectment of the tenant, so that the procedure that is being prescribed in this Bill, so far as recovery of rent is concerned, certainly facilitates the course which was available to

the landlord so far. I think it is very improper to debar a man from resorting to a remedy which he can seek in a competent court, simply because he did not do so within a certain definite time. I think that such a provision is likely to provoke litigation. When a tenant knows that he has no opportunity of questioning the distraint afterwards, he may, even when the matter needs further consideration be compelled to object to the distraint and to raise objection at a stage at which he would not otherwise have done so if he knew that he would have another opportunity later on. In these circumstances the addition of a further condition, which a tenant must satisfy before he can institute a suit, would be practically taking away the right of the tenant.

From whatever aspect, I look at it it seems to be quite obvious that this clause will practically be nullifying altogether the benefits that we desire to give to the tenant. The law of distraint should be disfavoured and not made easy. So I oppose the amendment and press for the adoption of the clause as it obtains in this Bill. It must also be remembered that the Bill has passed various stages, but we did not hear any objection on this clause up to this time.

Khan Bahadur Mr. Muhammad Aslam Saifi : The honourable member for Naini Tal has opposed the motion on the ground that the resources of the tenants are very limited. As regards their resources, I think the House must be aware, and it is needless for me to point out, that 75 per cent. of the income of the tenants is spent on litigation. It must be known to honourable members that the tenants are not in the habit of going away for long intervals from their villages. They are present on the spot, and the moment a notice is served they are cognizant of the fact that a distraint will be applied, and the period of 15 days I consider to be quite sufficient for them to contest the distraint. If they fail for any sufficient reason, as provided by the amendment that has been moved by the Hon'ble the Senior Member of the Board of Revenue, then this contention is removed. This section, as it stood, was not acceptable to the zamindar section of this House simply because it gave another chance of contesting distraint after a lapse of an indefinite period. I do not see how it can be said that the tenant, in spite of the fact that he received notice, cannot find either the time or the means to contest the distraint. The opposition of my friend has failed to convince me and I therefore oppose it.

Mr. H. David : It is news to me that the honourable member from Meerut wants to give us an idea that the tenants are rolling in wealth and that they spend 75 per cent. of their income on litigation.

Khan Bahadur Mr. Muhammad Aslam Saifi : May I correct the honourable member. I never said that they were rolling in wealth.

Mr. H. David : If they can spend 75 per cent. of their income on litigation I think they must be rolling in wealth. In the first place, I question that and, in the second place, I think most of this litigation which they have to enter into is on account of my friends the zamindars. Now look at the enormous number of suits for ejectment that are pending before the courts at present. However that may be, we must understand one thing. The crop has been standing there for months for filling his belly and the belly of his children, but he has got no money at home, how can he go to litigation and to the court, how can he undergo all this expense when he has no money in his pocket? Therefore, the idea of curtailing the right

[Mr. H. David.]

to redress is not fair to the tenant, he should be given sufficient opportunity for establishing his right.

Therefore, I think, the zamindars should generously allow the clause to stand in the Bill.

Bhaya Hanumat Prasad Singh: While I was moving this motion, I said, that unnecessary litigation should and ought to be stopped. My friend the honourable member for Naini Tal is not in favour of what I said. He has said in his speech that the way to litigation should be wide open, I, on my part, fail to see eye to eye with him. I do not find myself in a position to agree with the idea that further and further litigation should be encouraged. Sir, litigation has always proved ruinous both to the tenants and the landlords. It has been our experience that even the simple and innocent tenants have been induced by the village professional touts to enter into litigation which has ultimately resulted in their ruin. I admit that this clause stands part of the present Act, but I strongly object to its being reincluded in the present Bill. If a mistake was made in 1901 with regard to this section, is it necessary that the same mistake should be committed again and again? I say that when we have discovered and found out the mistake we ought to remedy and correct it, and, Sir, I am of opinion, that it is our duty to frame this Bill on such a sound footing that it may prove beneficial both to the tenants and the landlords and shut the way to litigation as far as possible. With these few words, I hope the House will accept what I have placed before it.

Hon'ble Sir Sam O'Donnell: I must confess that the opposition of the honourable member for Naini Tal to the amendment moved by Mr. Burn took me completely by surprise. It had appeared to me that that amendment would meet the objections raised by my zamindar friends and, on the other hand, that it would be one which would be acceptable to those who are concerned for the interests of the tenants. If the clause is passed in the form suggested by Mr. Burn, the position will be this. The tenant, when his crop is distrained, can bring a suit under section 175. He must indeed do so within 15 days, that is quite true, and I think it is eminently desirable that he should bring the suit within fifteen days, because questions relating to distraint ought to be settled promptly. On the other hand, if the tenant is prevented by any special cause from doing so, then clause 178 will still enable him to bring a suit. As Mr. Burn pointed out, the amended clause will really reproduce the provisions of section 85 of Act XII of 1881, and so far as I can make out for Mr. House's learned edition that section has worked successfully. Therefore, I see no reason why this clause, as amended by Mr. Burn's amendment, should not work equally successfully.

Question, that the words "has not brought" stand part, put and negatived.

Question, that for the words so struck out the words "is prevented by any sufficient cause from bringing" be inserted, put and agreed to.

Question, that clause 178, as amended, stand part, put and agreed to.

CLAUSE 179.

179. If any person under colour of this Act distrains or sells, or Wrongful acts of dis- causes to be sold any property otherwise than trainer. according to the provisions of this Act.

or if any distrained property is lost, damaged or destroyed by reason of the distrainer not having taken proper precautions for the keeping and preservation thereof,

or if the distraint is not immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit against the distrainer compensation for any injury which he has thereby sustained.

If the distrainer is an agent or servant, his principal may be joined as a defendant in the suit.

Khan Bahadur Mr. Muhammad Aslam Saifi : I beg to move that the following clause be added to clause 179 :—

"If the distrainer proves that the loss or the damage of property has been due to the negligence of the sale-officer the latter alone will be responsible for the injury or damage."

Paragraph 2 of this clause reads "or if any distrained property is lost, damaged or destroyed by reason of the distrainer not having taken proper precautions for the keeping and preservation thereof."

Then the third paragraph goes on to say "the owner of the property may institute a suit against the distrainer for compensation for any injury which he has thereby sustained."

I do not oppose the principle of this clause. I think very often the injury is due to the negligence of the sale-officer. If the distrainer cannot be made responsible for it, I think it is but fair and just that the sale-officer should be made responsible. I think I hardly am required to make a long speech in support of this proposal.

Hon'ble Sir Sam O'Donnell : I hope that the honourable mover will realize that the Tenancy Bill is not a proper place for a provision of this kind. The Tenancy Bill seeks to regulate the relations between the landlord and the tenant. It is not a place to deal with the liabilities of Government servants for their official acts. If a *qurq-amin* has been guilty of neglect or dereliction of duty or has caused damage to the crop, then a suit may lie against the Government for the recovery of the loss. The suit could of course be against the Government and not against the *qurq-amin* unless it is proved that he was not acting in his official capacity. The Tenancy Bill is not a proper place to put this in.

Khan Bahadur Mr. Muhammad Ismail : I think cases might arise when a suit will not lie against the Secretary of State and yet the tenant might have suffered. For instance, the crop is attached and the *qurq-amin* has neglected his duty or the *tahsildar* has not issued orders in time. In the meantime, there may have been floods or heavy rain and the property may have been damaged. The tenant undoubtedly has suffered. The fault is not of the *zamindar* who had the crop attached. Then again, Sir, the legal position is not so very simple. As has been pointed out by the Hon'ble the Finance Member, the Secretary of State is not always responsible for the tortious acts of a subordinate. The *qurq-amin* will not be responsible unless there is *mala fides*. To prove gross neglect or *mala fide* would be again a very difficult thing. There are acts like the Judicial Officers' Protection Act and many other rules and enactments which would make it very difficult for a tenant to bring a suit against a Government servant. Unless a provision of this sort is made in the Bill, the tenant will have no right to file a suit. The intention of this amendment is not so

[Khan Bahadur Mr. Muhammad Ismail.]

much to drag in the Secretary of State for damages, as to protect the zamindar in certain cases when the tenant may have suffered loss without the fault of the zamindar. Therefore there is no harm whatsoever if you allow the amendment to remain there. After all, the tenant as well as the zamindar have to prove their allegations, and unless there is a clear proof there is no reason to suppose that a decree will be passed. I may also point out that there are provisions in this Bill where extraneous matters have been introduced which are not matters between the landlord and the tenant. We have amended certain sections of that sort, but there are other provisions which do find place in the Bill. This amendment merely protects the position of the zamindar. It does no harm to the tenant and it does no harm to the Secretary of State. If the law merely is repeated there is no harm. Jurisprudence is not taught in villages in the lower primary schools, and it is just as well that these villagers should know their rights and their liabilities. On principle, I do not see why the Government should object to the amendment.

Khan Bahadur Mr. Muhammad Aslam Saifi: I quite accept the principle laid down by the Hon'ble the Finance Member and it is with that very object that I have brought forward this amendment. If such a provision is incorporated in the Act, it will help in regulating the relations between the tenants and the landlords, because in that case the qurq-amin will be very careful about what he does to the property of the tenant. Of course, I am quite aware of the fact that a landlord can bring a suit against the qurq-amin if he finds that it was due to the negligence of the qurq-amin that any damage has taken place to the property, but that is a very expensive process and it is very difficult, almost impossible, to prove a case in the court against a Government official. I, therefore, think, that the best thing is to put in a provision in the law itself.

Hon'ble Sir Sam O'Donnell: I adhere to my view that it is entirely out of place in the Tenancy Bill. I do not know of any other provision in the Bill which, deals with matters extraneous to the relations between tenants and landlords, nor do I know of any other Tenancy Act which contains provisions like this imposing responsibility upon a Government official. Moreover, the drafting of the clause seems to me to be very difficult to construe. There is no provision made for a suit against the qurq-amin. All that it says is that the latter alone will be responsible for the injury. I hope that my honourable friend will not press his amendment. I am sure it is one which is entirely out of place in a Tenancy Act.

Question put, that the words "If the distrainer proves that the loss or the damage of property has been due to the negligence of the sale-officer, the latter alone will be responsible for the injury or damage," be added to clause 179.

The House divided: Ayes, 38; Noes, 28.

Ayes.

Babu Mohan Lal Saksena.
Babu Jai Narayan Chaudhri.
Thakur Manjit Singh Rathor.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.

Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.

Ayes.

Thakur Sadho Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Pandit Sri Krishna Dutt Paliwal.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Mr. Mukandi Lal.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hammed Khan.

Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Dr. Ganesh Prasad.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Ball.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambort.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. J. Yorke.
Mr. R. Lurn.
Mr. A. W. Pim.

Mr. B. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. E. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Horchonroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Mr. Tracey Gavin Jones.
Mr. E. M. Souter.
Rai Bahadur Pandit Kharagjit Misra.
Babu Narayan Prasad Arora.

[The original division was Ayes 39, Noes 29. But in view of the remarks made by the President on page 357 of the proceedings of July 27, 1926, the division is Ayes 38 and Noes 28.]

Question, that clause 179, as amended, stand part of the Bill, put and agreed to.

CLAUSES 180, 181, AND 182.

CLAUSE 183.

183. A rent-free grant means a grant with or without consideration, Definition of rent-free and, if made subsequently to the commencement grant. of this Act, made by written instrument, by the proprietor, of a mahal or any part of a mahal, of a right to hold rent-free, of such proprietor, land in the mahal or part of a mahal.

Explanation I.—When a sale of land takes place, a reservation in favour of the vendor of a portion of the land sold, to be held rent-free by such vendor, is a rent-free grant.

Explanation II.—A grant of land for the performance of a service, religious or secular, is a rent-free grant.

Question, that clauses 180, 181, and 182 stand part of the Bill, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to propose the following amendment:—

For the first seven lines of clause 183, the following be substituted:—

“A rent-free grant means a grant of a right to hold land rent-free by a landlord with or without consideration:

“Provided that if made after the commencement of this Act, such grant shall be made by written instrument.”

[Hon'ble Sir Sam O'Donnell.]

The object of this amendment is simply to simplify the language. The present language as it stands is involved and not easy to follow.

Khan Bahadur Hafiz Hidayat Husain : I have to move an amendment to the amendment of the Hon'ble the Finance Member and of which I have already given notice. It stands at serial No. 222 of the old list. That is merely a verbal amendment. I beg to move that for the word "written" the word "registered" be substituted.

My reason for moving this amendment is simple and I do not think I need say much. The making of a rent-free grant is equivalent to conferring limited proprietorship, and the holder of a rent-free grant will be something like a proprietor till the grant may be resumed, or it may never be resumable. I, therefore, think that the provisions of the Indian Registration Act should be applied to instruments creating these rent-free grants. As soon as certain rights have been created in certain land however limited those rights may be, according to the Indian Registration Act the instrument creating those rights should be registered. And, therefore, I think it would be in keeping with the laws of the land if instruments mentioned in this clause were required to be registered according to law.

Hon'ble the President : The amendment moved is that for the first paragraph of clause 183, the following be substituted :—

"A rent-free grant means a grant of a right to hold land rent-free by a landlord with or without consideration :

Provided that if made after the commencement of this Act, such grant shall be made by written instrument."

Since when a further amendment has been moved that for the word "written" the word "registered" be substituted.

Question, that this further amendment be made, put and agreed to.

Question, that the first paragraph of clause 183, as reported by the Select Committee, stand part, put and negatived.

Question, that the following be inserted, as first paragraph of clause 183 :—

" A rent-free grant means a grant of a right to hold land rent-free by a landlord with or without consideration :

Provided that if made after the commencement of this Act, such grant shall be made by registered instrument," put and agreed to.

Question, that clause 183, as amended, stand part of the Bill, was put and agreed to.

CLAUSE 184.

Question, that clause 184, stand part of the Bill, put and agreed to.

CLAUSE 185.

Grant in respect of which suit is barred. 185. (1) No suit shall lie under the provisions of this chapter in respect of land—

(a) held rent-free in a district or portion of a district which is permanently settled under a grant made prior to the permanent settlement, or

(b) held rent-free under a judicial decision of a date prior to the twenty-second day of December, 1873, or

- (e) held rent-free by a holder whose title is based on a transfer of the land for valuable consideration made by the proprietor or by a rent-free holder thereof before the twenty-second day of December, 1873, provided that at that date the right of the proprietor to resume the land had been barred by section 28 of Act X of 1859 or by article 130 of the Second Schedule of the Indian Limitation Act, 1871.

Pandit Nanak Chand : I beg to move that the following sub-clause be added to clause 185:—

“(d) held rent-free by a holder as *punarth* or reward of service unconditionally.”

This is in accordance with the decision of the Board of Revenue.

Hon'ble Sir Sam O'Donnell : I am surprised to hear that this amendment is in accordance with the decision of the Board of Revenue. I can see no reason whatever for making the proposed addition. All the rent-free grants referred to in clause 185 are very old grants, but the amendment refers to grants that may be made in future. I cannot believe that this amendment is in accordance with any decision of the Board of Revenue.

Pandit Nanak Chand : I have nothing more to add. I shall show the ruling to the Hon'ble the Finance Member.

Mr. Mukandi Lal : After the Bill is passed.

Question, that the words “ held rent-free by a holder as punarth or reward of service unconditionally ” be added as sub-clause (d) to clause 185, put and negatived.

Question, that clause 185 stand part of the Bill, put and agreed to.

CLAUSE 186.

186. (1) Land held rent-free in respect of which a suit is not barred by the provisions of section 185 shall be deemed to be held in proprietary right, and the holder shall be liable to pay the revenue due in respect thereof, where—

- (a) it is held under a grant made in perpetuity and in consideration of the loss or surrender of a right previously vested in the grantee, or
- (b) it is held under a grant made in perpetuity by a written instrument for valuable consideration, or
- (c) not being held for the performance of some service, religious or secular, or, conditionally, or for a term, it has been held rent-free for fifty years immediately preceding the commencement of this Act and by two successors in interest to the original grantee, or, where there was more than one such grantee, to any one of such grantees.

(2) Whenever a court declares land to be held in proprietary right under this section it shall determine the revenue payable in respect thereof.

Explanation.—For the purposes of clause (c) of sub-section (1) a person to whom the interest of a deceased person passes by right of survivorship shall be deemed to be his successor in interest.

Rai Bahadur Thakur Hanuman Singh : I rise to move that the following be added as sub-clause (3) to clause 186 :—

“(3) A holder of the proprietary right in land under this clause shall become an under-proprietor of the said land after the determination of the revenue thereof, under sub-clause (2) and such revenue shall be payable to the superior proprietor of the land.”

As a rule, whenever land revenue is assessed on any rent-free holding, the holder of the holding becomes an under-proprietor and generally the revenue of the holding is paid through the superior proprietor, or to the superior proprietor; but when I was in Ballia I sued a certain rent-free grantee for assessment of land revenue. Land revenue was assessed, but a certain Commissioner ordered that the land revenue should be paid direct to the Government. On that account I had to appeal to the Hon'ble the Board of Revenue. The Board of Revenue accepted the appeal and ordered that the revenue should be paid to the proprietor. I have proposed this addition in order that there should be no mistake in future.

Mr. R. Burn : I rise to oppose this amendment. In the province of Agra the general practice in cases like this is that the holder of the rent-free grant which has been resumed becomes a plot-proprietor and in such a case his payment is made direct to Government. The honourable member has not given references to the rulings which he quoted, or I should have been very glad to look them up, but if he will turn to the fourth line of this clause he will find that land in this case is deemed to be held in proprietary right and the holder is liable to pay the revenue. His proposal would introduce into the province of Agra a class of under-proprietors which, so far as my knowledge goes, does not exist at all. We have proprietors in some of the western districts who are liable to pay malikana rate, but they pay their revenue direct into the treasury, and the adoption of this clause would introduce a fresh complication requiring the introduction of the complicated rules in force in Oudh for the regulation of rent between proprietors and under-proprietors.

Khan Bahadur Mr. Muhammad Ismail : I am not aware of the condition of the western districts, but in the eastern districts, there are a large number of under-proprietors, and the Government revenue due to the superior proprietor is not realized through the treasury, but directly. There are some under-proprietors who deposit the Government revenue in the treasury and it is recovered by the superior proprietor from the treasury, but there are cases where it is paid directly by the under-proprietor to the superior proprietor, which is known as malikana.

Voice of—“Malikana is quite different to revenue.”

Rai Bahadur Thakur Hanuman Singh : I have listened to the speech of the Hon'ble the Senior Member of the Board of Revenue. I remember very distinctly that it was his court which decided that the land revenue assessed on that particular holding should be paid direct to the landlord. And then, Sir, if this practice is to be followed, that the land revenue assessed on these holdings should be paid by these petty proprietors direct into Government treasury, then I think no landlord will apply to courts to have land revenue assessed on rent-free holdings. It will be the Government business to assess revenue on those holdings. That has not been the practice and that ought not to be the practice in future.

Hon'ble Sir Sam O'Donnell : If Mr. Burn did give such a decision as is attributed to him that must have been . . .

Rai Bahadur Thakur Hanuman Singh : Not Mr. Burn, but his court, the court of the Board of Revenue.

Hon'ble Sir Sam O'Donnell : The Board of Revenue may occasionally make a slip, though that is a rare occurrence. But, at any rate, we cannot accept that as good law. However, the amendment seems to me clearly inconsistent with the first part of the clause.

Question, that a new sub-clause (3) be added to clause 186, put and negatived.

Question, that clause 186 stand part of the Bill, put and agreed to.

The Council here adjourned for lunch.

After the recess the Deputy President took the Chair.

CLAUSES 187, 188 AND 189.

Question, that clauses 187, 188, and 189 stand part of the Bill, put and agreed to.

CLAUSE 190.

190 (1) Where land held under a rent-free grant is found liable to have rent fixed thereon under section 187, the grantee shall be deemed to have been a tenant from the date of the grant, and the class of his tenancy shall be determined in accordance with the provisions of this Act.

Determination of class
of tenure and rent

(2) A tenant referred to in sub-section (1) who at the commencement of this Act had held the same land continuously for twelve years within the meaning of sections 11 to 14 of the Agra Tenancy Act, 1901, shall be deemed to have acquired a right of occupancy.

(3) If the grantee is declared to be an occupancy or statutory tenant, the rent shall be decreed at the appropriate rates specified in section 59.

(4) The rent decreed under sub-section (3) shall be payable from the first day of July next following the date of the institution of the suit.

Khan Bahadur Hafiz Hidayat Husain : I beg to move that clause 190 be omitted, and the following substituted :—

190 (1) When land held under a rent-free grant is found liable to have rent fixed thereon under section 187, the grantee shall be deemed to be a non-occupancy tenant from the date of the grant and shall be declared a statutory tenant on assessment of a rent of land.

(2) The rent decreed under sub-clause (1) shall be payable from the first day of July next, following the date of the institution of the suit.

Now, Sir, rent-free grants are divisible under three heads according to this Bill. First are grants in respect of which the right of suit is barred, and these are defined in section 185; second are grants held in proprietary rights, but liable to assessment of revenue; these are defined in section 186, and third are grants defined in section 187, and liable to fixing of rent or ejectment. Thus it appears to me that sections 185 and 186 exhaust those grants that are of a permanent character. Other grants defined in section 187 are of the nature of permissive grants, that is to say, grants held at the option or will of the landlord—akin to tenures held at the will and option of the landlord with certain advantages added. They are similar in status to those of non-occupancy tenures. If this interpretation of mine

[Khan Bahadur Hafiz Haidyat Husain.]

be correct, then it is only fair that on assessment of rent the holders of these grants should have statutory tenant's right conferred on them according to the tenor of the present Bill. The mere fact that these grantees have been holding the land for the last twelve years should not be used against the interests of the zamindars to confer on such tenants occupancy rights, because it is well-known that permissive grants are held for some definite object, some of them are *muafi khidmati* and some are *muafi khairati*, resumable if no service is required or no charity intended. The utmost, therefore, that these tenants can have is conferment of statutory rights on them. I do not think, Sir, that would be right for persons like those who have been holding the land at the will and pleasure of the landlord to be given the status of occupancy tenants. The mere fact that because they have been holding the land for twelve years should not entitle them to occupancy rights. It is not my intention to deprive those tenants who have been holding lands like these *muafidars* of their lands. I only want that only those rights should be conferred on them to which even according to the present Bill which aims at giving greater rights to the tenants, these *muafidars* are entitled. I oppose conferment of occupancy rights on such tenants or *muafidars*.

Mr. E. Burn: It is my duty to oppose the amendment. I may point out that in sub-clause (2) it has been provided that the tenant who at the commencement of this Act had held the same land continuously for twelve years shall be deemed to have acquired a right of occupancy. Under the draft Bill, however, the grantee is to be deemed a non-occupancy tenant from the date of the grant. The result of this amendment would be to take away from many tenants the rights which they have acquired. The honourable member said that he never intended that any such rights should be taken away. I submit to the Council that the clear effect of this amendment is to take away such a right. Section 157 of the existing Act provides that when a rent-free grant is found to be liable to have rent assessed thereon, the grantee shall be deemed to have been a tenant from the date of the grant, and the class of his tenancy shall be determined in accordance with the provisions of the Act. The amendment provides that the grantee shall be deemed to be a non-occupancy tenant from the date of the grant and shall be declared a statutory tenant on assessment of rent on the land. Thus it entirely takes away the provision which is made in sub-clause (2) of clause 190, by which if at the time this Bill becomes law a tenant has held the same land continuously for twelve years he will acquire the right of occupancy. For these reasons, I oppose the amendment.

Khan Bahadur Mr. Muhammad Ismail: So far as I can see the object of this amendment is not to punish a man for his charity. Section 190 applies only to such cases where the grant can be resumed and rent can be assessed upon it. Grants must be necessarily of a temporary character where the law permits that the zamindar has the right to resume under specified circumstances. When the grant was made it must have been made because the grantee had served the family and deserved reward for particular reasons. After the lapse of years you may find that the zamindars themselves are reduced to poverty and cannot afford to keep on all sorts of people hanging on them and they want to resume possession of the land. Once the law allows the zamindar to resume possession

of the land and treat the tenant as a licensee, then it would be absolutely inconsistent to make him occupancy tenant. Again, if a certain person is entitled to charity, it does not follow that his son should be entitled to it, particularly when the donor does not want to do so. The amendment is perfectly clear and ought to be acceptable to the House.

Hon'ble Sir Sam O'Donnell: I wish merely to reinforce what has fallen from Mr. Burn on this subject. Section 157 of the existing Act says:—"When a rent-free grant is found to be liable to have rent assessed thereon, the grantee shall be deemed to have been a tenant from the date of the grant, and the class of his tenancy shall be determined in accordance with the provisions of this Act." That is to say, if a person has held a rent-free grant for twelve years, he will become an occupancy tenant. A number of rent-free grantees may, under the provisions of this section, have acquired actually the right of occupancy, although that right for the moment is dormant. The right is dormant until the rent-free grant is resumed, but still the right is there. Therefore, if this amendment is carried, we shall be depriving people of rights which have already been acquired under the existing law. That is the fundamental objection to the proposal.

Khan Bahadur Hafiz Hidayat Husain: Under section 157, to which the Hon'ble the Finance Member has drawn my attention, there will undoubtedly be certain grantees who, having held the land for twelve years, will become occupancy tenants. Section 157 has however to be read along with section 154. The latter section refers to resumption of land held rent-free. It says:—"Land held rent-free shall be liable to resumption, only when by the terms of the grant or by local custom it is held—

- (1) at the pleasure of the grantor; or
- (2) for the performance of some specific service, religious or secular, which the proprietor no longer requires; or
- (3) conditionally or for a term, and the condition is broken or the term expires."

Now, the state of such a grantee is analogous to that of a thekadar who holds on certain conditions. The rights of a thekadar in land can never mature into those of occupancy tenants, for the simple reason that the thekadar holds on certain conditions and as soon as his period has expired or he is otherwise evicted, he goes out irrespective of whether or not he has been holding the land for twelve years. On this analogy, such a grantee should not be given rights of occupancy, but only those of statutory tenants on resumption or assessment of rent.

Hon'ble Sir Sam O'Donnell: I have listened very carefully to what the honourable mover said, but, as far as I can see, he has not attempted to contest my point. My point is that under section 157 of the present Act rights may have already accrued. I will again read that section, which says:—"When a rent-free grant is found to be liable to have rent assessed thereon, the grantee shall be deemed to have been a tenant from the date of the grant, and the class of his tenancy shall be determined in accordance with the provisions of this Act." Clause (2) of section 157 says:—"If the grantee is so declared to be an occupancy tenant, the rent shall be decreed at the prevailing rate paid by occupancy tenants for land of similar quality and with similar advantages in the

[Hon'ble Sir Sam O'Donnell.]

neighbourhood." It is quite clear that under this section the grantee could become an occupancy tenant when his rent-free grant was resumed, and all that we do in clause 190 is to preserve those rights. Sub-clause (2) of clause 190 says:—"A tenant referred to in sub-section (1) who at the commencement of this Act had held the same land continuously for twelve years within the meaning of sections 11 to 14 of the Agra Tenancy Act, 1901, shall be deemed to have acquired a right of occupancy." We are not referring to future cases. We are referring to the case of tenants who at the commencement of the Act have held continuously for twelve years. Only these persons will have acquired rights, and if their land is resumed, they will be classed as occupancy tenants. We are merely preserving the rights that have already accrued. That is my point and there has been no attempt to meet it.

Question put, that clause 190 as reported by the Select Committee stand part of the Bill.

The House divided : Ayes, 39 ; Noes, 28.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. E. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Babu Narayan Prasad Arora.
Babu Mohan Lal Saksena.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Babu Ram Chandra Sinha.
Maulvi Zahur-ud-din.
Mr. E. M. Souter.

Noes.

Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rao Sahib Kunwar Sardar Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdel Hameed Khan.
Nawabzada Muhammad E'jaz Ali Khan.

Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-us-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Salyid Muhammad Ashiq Husain.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Mr. Tracey Gavin Jones.
Dr. Ganesh Prasad.

CLAUSE 191.

Question, that clause 191 stand part of the Bill, put and agreed to.

CLAUSE 192.

192. In any suit brought under the provisions of section 186, section 187, section 188 or section 44, unless the plaintiff objects, the court shall, after framing the necessary issues, grant any relief under any of those sections to which it may find the plaintiff entitled, notwithstanding that such relief may not have been asked for in the plaint :

Provided, first, that after framing such issues the court shall, on the request of either party, grant reasonable time for the production of evidence.

Provided, secondly, that where the plaintiff has claimed a relief to which he was not entitled, the court may take this fact into consideration in awarding costs.

Khan Bahadur Hafiz Hidayat Husain : I beg to move that clause 192 be deleted and the following be substituted for it:—"In any suit brought under the provisions of section 186, section 187, section 188 or section 44 the court shall, consistently with the Code of Civil Procedure, grant any relief to the plaintiff under any of those sections to which it may find the plaintiff entitled, notwithstanding that such relief may not have been asked for in the plaint." Since the passing of the Civil Procedure Code of 1908, under order VII, rule 7, courts are competent to grant any relief to which the plaintiff may be found entitled without his asking for it. The old procedure as contained in the Code of Civil Procedure, 1882, was that the courts were confined to the grant of the relief asked for in the plaint by the plaintiff. Now under the present Code of Civil Procedure latitude has been given to the civil courts and they are competent to grant any relief to which the plaintiff may be entitled without his asking for it. If you attempt now to define more closely the powers of revenue courts, then although you apply the Code of Civil Procedure to regulate the procedure of the revenue courts, you begin to spell out those powers to control the discretion of the revenue courts, which I think is uncalled for. Then, the provisos go still further. The first proviso says that after framing such issues the court shall, on the request of either party, grant reasonable time for the production of evidence. I think this proviso is absolutely unnecessary, because the courts do give time when the parties want time for the production of evidence—documentary or oral.

For these reasons I move that the present clause 192 be deleted and my amendment be adopted.

Mr. R. Burn : I have listened to the honourable mover's speech with a little surprise, because this clause has been put into the Act really in the interests of the zamindar. What happens in these cases is as follows:—There is a piece of land occupied by a man paying no rent. The zamindar wants to get some rent, and, after making such inquiries as he can, he files a suit, generally under section 34 of the existing Act, which is represented by clause 44 of the Bill. He says that the man is a trespasser. Very often the zamindar really has no idea as to what particular defence the man in possession is going to put up. The man in possession says that he is holding the land as a rent-free grant. What happens under the present Act is that the assistant collector dismisses the suit and tells the zamindar to file a fresh suit. The zamindar files his suit under one part of the chapter dealing with rent-free grants and

[Mr. R. Burn.]

runs the risk of having his suit dismissed again and being told to bring it under another section. This clause is intended to enable the court, whenever a case of this kind comes before it, to go into it on the pleadings and to arrive at a final conclusion. The honourable mover wishes in the first place to insert a reference to the Code of Civil Procedure. The exact words that he wishes to be put in are "consistently with the Code of Civil Procedure." The Code of Civil Procedure as is already provided by clause 264 of this Bill does apply, subject to certain alterations and exceptions, to proceedings under the Act, but there are certain provisions of the Civil Procedure Code which may and very probably will prevent the court from proceeding as we wish it to do to arrive at a conclusion, whatever pleadings are set up. Under order XIV, rule 3, the court may frame issues from all or any of the following materials: in the first place, allegations made on oath by the parties; then allegations made in the pleadings; and lastly documents produced by the parties. On the other hand, order VII, rule 1, requires that the plaint must state the relief claimed, and though it is possible for a plaintiff to state his relief in the alternative under order VII, rule 1, the point is that in this particular class of case the plaintiff does not very often state an alternative relief, because he has no inkling of the line of defence that is going to be set up against him. I am sure that the honourable member with his experience of the courts will agree that a court would be shy of allowing the plaintiff to set up an entirely new cause of action. There are of course very wide powers for amending the plaint, but still it sometimes happens that the busy assistant collector takes the opportunity of getting rid of the case altogether, hoping that he will be gone before it is instituted under any other clause. Honourable members will observe that clause 192 does protect the plaintiff because it gives him the right to object. But this clause is expressly intended to give the court even wider powers than the Civil Procedure Code would, where the facts of the case are so doubtful that the plaintiff himself is not really in a position to state the exact relief which he asks for. The honourable mover has also objected to the proviso. This proviso, as honourable members will see, was added by the select committee in order to make sure that no surprises were to be sprung on the parties. I have seen a great many of these cases; I have some experience of them also in the Court of Wards, and I know that at the start, till a certain amount of investigation has been made, it is often very difficult really to make certain where the truth lies. In suits under this Act the ordinary procedure is to issue a summons to the defendant for the settlement of the case. As we all know, an endeavour is made to get these rent cases decided as quickly as possible, and this proviso has been put in so that when the frame of the case has been altered during the hearing no party shall be damaged because he has not had a reasonable chance of producing his evidence.

Khan Bahadur Hafiz Hidayat Husain: The Hon'ble the Senior Member of the Board of Revenue has got very much larger experience of his assistant collectors than I can claim to possess, and if he thinks that the retention of the clause in the Bill is necessary for their guidance, I have got no objection, although I think that the application of the Civil Procedure Code would have amply served the purpose. I therefore withdraw my amendment.

Amendment by leave withdrawn.

CLAUSE 192.

Question, that clause 192 stand part of the Bill, put and agreed to.

CLAUSES 193 AND 194.

Question, that clauses 193 and 194 stand part of the Bill, put and agreed to.

CLAUSE 195.

195. Notwithstanding anything contained in chapter XV, appeals from decree or orders under this chapter shall be governed by the provisions of chapter X of the United Provinces Land Revenue Act, 1901.

Khan Bahadur Hafiz Hidayat Husain: I beg to move that in clause 195 the following be added after the words and figure "Land Revenue Act, 1901:—"

"except that the period of appeal to the Commissioner shall be thirty days from the date of the decree or order appealed against."

I move this amendment because in the schedules the period of appeal to the Commissioner has now been reduced from 60 to 30 days, and therefore to be in keeping with the schedules the limitation period for appeals under this chapter should also be reduced to 30 days.

Hon'ble Sir Sam O'Donnell: I do not think that the amendment is of very great consequence. Whether 30 days or 60 days is allowed seems to be of little consequence. I therefore have no objection to the amendment.

Question put that these words be added.

The House divided: Ayes, 50; Noes, 12.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Thakur Rajkumar Singh.

Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rao Sahib Kunwar Sardar Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Khan Bahadur Mr. Muhammad Aslam Sa'id.
Rao Sahib Abdul Hameed Khan.
Nawabzada Muhammad E'jaz Ali Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.
Dr. Ganesh Prasad.

[Hon'ble Sir Sam O'Donnell.]

Noes.

Babu Narayan Prasad Arora.
 Babu Mohan Lal Saksena.
 Thakur Manjit Singh Rathor.
 Babu Nemi Saran.
 Chaudhri Badan Singh.
 Thakur Sadho Singh.

Pandit Sri Krishna Dutt Paliwal.
 Babu Parsidh Narayan Anad.
 Pandit Govind Ballabh Pant.
 Pandit Har Govind Pant.
 Babu Ram Chandra Sinha.
 Maulvi Zahur-ud-din.

Hon'ble the President here resumed the Chair.

Question, that clause 195 stand part of the Bill, put and agreed to.

CLAUSE 196.

196. A grove-holder is a person to whom land has been let or granted by a *landlord, a permanent tenure-holder or a fixed-rate tenant* for the purpose of planting a grove, or who has in accordance with local custom entitling him to do so or with the written permission of the *landlord, the permanent tenure-holder or the fixed-rate tenant*, planted a grove on land held by him as tenant (not being a permanent tenure-holder, a fixed-rate tenant or a sub-tenant) or as rent-free grantee, not being a grantee to whom the provisions of section 185 or section 186 apply, of such *landlord, permanent tenure-holder or fixed-rate tenant, as the case may be :*

Provided that where the permission was granted prior to the commencement of this Act, the permission need not have been in writing and may have been either express or implied.

Hon'ble Sir Sam O'Donnell: I beg to move that in lines 3 and 4, 7, and 12 the words "or fixed-rate tenant" be deleted and that in lines 2, 6, and 11 the word "or" be substituted for the comma between "landlord" and permanent-tenure-holder.

This is merely a consequential amendment. The Council has decided that the tenant of a fixed-rate tenant shall be a sub-tenant and a sub-tenant cannot become a grove-holder. Accordingly, it is necessary to omit the words I have referred to. The amendment is in fact consequential on the amendment made in clause 3(7) defining a "sub-tenant."

Question, that the words "or fixed-rate tenant" stand part, put and negatived.

Question, that the word "or" be substituted for the comma between "landlord" and "permanent tenure-holder," put and agreed to.

Question that clause 196, as amended, stand part, put and agreed to.

CLAUSE 197.

197. Notwithstanding anything previously contained in this Act, but subject in respect of the matters mentioned in clauses (a), (b), (d), (e), and (g) to any custom or contract to the contrary :—

Rights and liabilities of grove-holders.

- (a) it shall be presumed that a grove-holder holds the land in respect of which he is grove-holder under a lease the term of which will expire when the land ceases to be grove-land ;
- (b) the interest of a grove-holder shall be transferable by voluntary transfer or in execution of a decree of a civil or revenue court or otherwise ;

- (c) the interest of a grove-holder shall devolve as if it were land and the devolution of such interest shall not be governed by the provisions of section 24 or section 25;
- (d) a grove-holder may sub-let the whole or any portion of his grove-land, but not so as to confer on his sub-tenant any interest outlasting his own interest and that of persons claiming through him or to relieve himself of any of his liabilities to his landholder;
- (e) a grove-holder shall not be liable to ejectment by his landholder except under section 84 or on the ground that he holds under a lease the term of which has expired, or will expire, at or before the end of the current agricultural year, but nothing in this clause shall be deemed to prevent the landholder from obtaining the sale of his grove-holder's interest in execution of a decree for arrears of rent;
- (f) no abandonment of his grove by a grove-holder shall of itself operate to give the landholder a right of re-entry under section 107;
- (g) a landholder may exercise against a grove-holder the right conferred by section 152 to 154 to realize the rent by distress and sale of the fruit, or, where these have a commercial value, of the flowers of the grove, or of any crops grown under or among the trees thereof, but not of any other produce of the grove;
- (h) nothing in chapter XI of this Act shall be deemed to apply to land held by a grove-holder as such; and
- (i) where a person becomes a grove-holder in respect of land of which he is a tenant or rent-free grantee, he shall hold such land as grove-holder in supersession of all subsisting rights and liabilities so far as they are inconsistent therewith.

Hon'ble Sir Sam O'Donnell: I beg to move that in line 2 of clause 197(a) the words "as a non-occupancy tenant" be inserted between the words "grove-holder" and "under." The intention of the Bill is that on land ceasing to be grove-land, the grove-holder should be liable to ejectment under clause 197(a), and to make this quite clear we propose to add the words "as a non-occupancy tenant" after "grove-holder" in clause 197(a). The whole object is simply to make the position quite clear.

Question, that the above amendment be made, put and agreed to.

Bhaya Hanumat Prasad Singh: I beg to move that the word "no" in the beginning of line 1 of sub-clause (f) of clause 197 be deleted.

My object in moving this amendment is that after a tenant has abandoned his grove, the grove-land should go back to the landlord and not to his heirs, as provided by section 107. The grove-land ought not to be placed in the same category as cultivated land. Grove-land is a land in respect of which the tenant has to obtain special permission from the landlord to plant trees on it. There are a number of groves about which no written permission was obtained. They will naturally go back to their heirs after the tenant has abandoned them. So this would give rise to a great deal of litigation between the landlord and the heirs of the tenant who will abandon the grove. With this object in view I place this amendment before the House, so that in future there might not be any litigation with regard to the groves abandoned by the tenant, and I hope the House will accept it.

[Hon'ble the President.]

Question, that sub-clause (f) of clause 197 stand part, put and negatived.

Hon'ble Sir Sam O'Donnell: Might we move the renumbering of the other sub-clauses?

Hon'ble the President: That can be moved later. There are other sub-clauses to be added and we might see the fate of those amendments before we take up renumbering.

Pandit Govind Ballabh Pant: I move that the following words be added after the word "therewith" in sub-clause (i) of clause 197:—

"Except that where a grove exists, at the time of the commencement of this Act, on occupancy land and land appurtenant thereto is entered as the land of an occupancy tenant in the annual registers maintained under the Land Revenue Act and the tenant is paying rent to his landlord on its account, it will not cease to be part of his occupancy holding when it ceases to be grove-land."

With your permission, Sir, I would like to make an amendment here in order to carry the idea more correctly. After the words "on occupancy land" substitute the words "which is entered as such" for the words "and the land appurtenant thereto is entered as the land of an occupancy tenant."

Hon'ble the President: Will the honourable member move it in that form?

Pandit Govind Ballabh Pant: I move that the following words be added to clause (i) after the word "therewith":—

"Except that where a grove exists, at the time of the commencement of this Act, on occupancy land which is entered as such in the annual registers maintained under the Land Revenue Act and the tenant is paying rent to his landlord on its account it will not cease to be part of his holding when it ceases to be grove-land."

If honourable members will refer to clause 197, they will find that sub-clauses (a), (b), (d), (e) and (g) are not of a universal character but are to be controlled by any custom or contract that may be in force in any locality and to that extent there may be variance in these clauses according to local practice. They must also be remembering that under the existing Act as well as under the present Bill the occupancy tenant has the right of planting trees or groves on occupancy land either according to custom or with the permission of his landlord. There may be cases, and I understand there are cases, in which occupancy tenants have planted groves on occupancy land either with the permission of the landholder or in accordance with the custom obtaining in any locality, where such land, in spite of its being grove-land, has been regularly shown as part of the holding of an occupancy tenant and for which rent has been regularly paid by the tenant concerned. I do not see any reason why in this case such land should cease to be a part of the holding of the occupancy tenant after the passage of this Act. The honourable members will please notice that the amendment that I am moving is confined only to such

groves as exist today and as will be in existence at the time of the commencement of this Act. I think we will be taking away one of the vested rights of an occupancy tenant, who has planted a grove on land which forms part of his holding with the permission and the consent of the landholder, either, explicit or implicit, where it is in accordance with the legal custom. If we say that he will have no subsisting rights on such land after it ceases to be grove-land there is no reason why he should be deprived of the right which exists today. When the landholder permitted him to plant trees or to plant a grove on the land which formed part of his holding and he agreed to the tenant's using of the land for purposes of planting trees on the express understanding that the land would never continue to be part of his occupancy holding, then in these circumstances I think it is but just and fair that so far as the groves existing today are concerned, which belong to an occupancy tenant, which are shown as part of the holding of the occupancy tenant, and for which the occupancy tenant has been paying rent, should be treated as part of his occupancy holding when even the grove ceases to exist on that land. It is further to be remembered that certain privileges which are otherwise enjoyable under this Act may not be available to him because of the restriction imposed by local custom. So in certain cases it is the custom which is to control the enjoyment of these groves. I think this principle which is embodied in this clause by which all existing rights will cease to exist after a certain time is of a universal character. In these circumstances I think it is but fair that the occupancy tenant should be protected. He has had enough of his misfortunes accruing from this Bill or due thereto and there is no reason why one more should be added.

Khan Bahadur Mr. Muhammad Ismail : I beg to oppose this amendment. The grove-holder has got much higher rights than an occupancy tenant. An occupancy tenant is not entitled to transfer the property or to have other rights which under this Bill have been granted to a grove-holder. With the permission of the zamindar, express or implied, the tenant planted groves and he has been enjoying that right for some years past. It follows that he ceased to be an occupancy tenant and with the tacit permission of the zamindar he is enjoying higher rights. What my friend contends is that, while he may go on enjoying higher rights as long as the grove lasts, he will again become a tenant, that is come to a lower plane, in order to enjoy the rights of an occupancy tenant also. That is to say, he must have a dual capacity in him; for certain purposes he is an occupancy tenant and for others he is a grove-holder. My submission is that this is a most inconsistent position to take. Once he has become a grove-holder, he is a grove-holder, he ceases to be an occupancy tenant; he cannot revert to the position of occupancy tenant simply because he wants to stick to the land. The rights and liabilities ought to go at the same time. If he wants the right of a grove-holder, he must also accept the liability of a grove-holder. In certain rulings of the High Court it was decided that if a grove has been planted on an occupancy holding the nature of the tenure is not changed and it continues to be the occupancy holding of that tenant, but this Bill has made the position of the grove-holder clear, and there is no reason why further anomaly should be introduced. He must accept the position of a grove-holder and when the trees have been dried up or cut away then he should lose the right to the land and the property should go back to the landholder.

Mr. R. Burn : The amendment which has been proposed by the honourable member for Naini Tal seems to be unnecessary in one respect and objectionable in another. In the first place, I do not think that sub-clause (i) refers to existing groves. I do not find anything in that section which would make any change in the tenure on which land is held at present in this regard. In the next place, I think the amendment proposed is objectionable because it attaches too much weight to entries in the annual registers. It says that where a grove exists on occupancy land and the land is entered as the land of an occupancy tenant in the annual register, it will not cease to be part of the occupancy holding of the tenant when it ceases to be grove-land. Now there certainly have been cases in which an occupancy tenant has obtained permission to plant trees, and it is doubtful, as the honourable member for Gorakhpur has stated, what the position then becomes, that is to say, under the existing Act. Does the man still retain occupancy rights, or does he retain what the honourable member called the higher status of a grove-holder? Supposing, as certainly can be done under the existing law, he sells his grove. The existing law says he cannot sell his occupancy right. What does the holder of the grove become? The honourable member for Naini Tal has not dealt with that contingency at all. That is one of the most important things for consideration, and was one of the things which we had in mind most clearly when we altered the definition of grove-land in select committee. We distinguished between two classes of groves, one like a grove of mangoes which lasts for more than a generation and is frequently the subject of transfer. That class of groves constitutes grove-land, and this sub-clause for the future provides that if an occupancy tenant plants mangoes in his occupancy holding, then his occupancy status goes and he becomes a grove-holder. If, on the other hand, he grows an orchard, *turshawa*, which, with all respect to the member from Allahabad, Mr. David, does not always last for two generations, the object of the Bill is that if occupancy rights pre-exist, then they should continue. Orchards of this sort are not classed as grove-land in which, under this clause, the right of an occupancy tenant would cease on the planting of the grove. I think therefore that the addition which is proposed, as I said, is unnecessary, because if any existing rights do exist, they can be proved; and it is also objectionable because it purports really to make the existing entries in the annual registers, which may or may not be correct, conclusive proof that the occupancy right still exists.

Pandit Govind Ballabh Pant : If the Senior Member of the Board of Revenue had not developed his speech further, and had only given me the warning that by raising this question here I was going to encourage people to believe that the present sub-clause also applies to the existing groves, and that I had been very ill-advised in doing so, and had stopped there, I would have withdrawn my amendment with thanks. As it is, he has followed it up with discussion on merits, and he seems to be of the opinion that while it is possible that his view may not be supported by some of his successors as would not be very strange or unusual among the members of the Board of Revenue and their successors he tells me that in his personal opinion on merits this amendment is not sound. I know that the honourable member does not seem inclined to attach any importance whatsoever to the annual registers. As

he is in charge of the Revenue department and probably has much to do with land records, I think

Mr. R. Burn : Nothing at all.

Pandit Govind Ballabh Pant : Except perhaps delivering his judgments now and then, saying that all this is wastage of a huge character and colossal type. I hope that when the question as to how to effect economy comes up next time we will be able to

Mr. R. Burn : I said entries in annual registers were capable of disproof, while this amendment would tend to make them conclusive proof with regard to this particular matter.

Pandit Govind Ballabh Pant : Well, Sir, that does not change the position to a very large extent. But all the same he appears to think that annual registers do not deserve much weight and he thinks that it should ordinarily be easy to disprove the entries that exist there and to establish that they are incorrect. I think that all this huge expenditure incurred for these annual registers should be a point for scrutiny by the Council later on. Here we are not concerned with that. As it is, I do not want to make the registers conclusive. I follow it up with another addition, and I say that if there is an entry like that, and if rent is being paid by an occupancy tenant for the land covered with a grove, well, if these two things are not sufficient, then I am not going to attach greater weight to entries even in that sacred book the settlement register, which is considered as conclusive by him. I personally think there is enough of safeguard in these two conditions which have to be observed simultaneously. There should be an entry in the annual register, and there should besides be payment of rent by a tenant as an occupancy tenant. These two things seem to me to establish conclusively the status of a tenant as a tenant with occupancy rights. We are told that the position of grove-holder is superior to that of an ordinary occupancy tenant. Well, certainly as the occupancy tenant is being treated under this Bill I personally am prepared to accept that position—that the position of many other persons is superior to that of the occupancy tenant. But still my amendment will not prejudice his rights as a grove-holder so long as he keeps the grove. As I said in the course of my opening remarks, one of the more important privileges that the grove-holder has is that he can transfer certain rights in the grove. But this right of transfer which is embodied in sub-clause (b) of section 197 is to be controlled by local custom. That is, after all, the most valuable right; but there may be cases of occupancy tenants where they may not be allowed this right of transfer under sub-clause (b) because of local custom. So it is possible that an occupancy tenant may be debarred by local custom from enjoying the privilege which is conferred on occupancy tenants in the absence of such local custom by this clause, and, on the other hand, he may forfeit his right of occupancy, then he is only being subjected to liabilities under this Bill and is not getting any privilege whatsoever. In such a case, I agree, his position would not be envied by a simple grove-holder. Sir, as to the right of sale again I think there is some confusion. As I said it is applicable only to groves existing today and not to those coming into existence hereafter, and only to those groves which are entered in the name of the tenant as being part of the holding of the occupancy tenant. I cannot possibly conceive that an entry can be made in the name of a transferee

[Pandit Govind Ballabh Pant.]

which will give him the status of occupancy tenant in the annual register. Then again I do not think any transferee will be paying rent as occupancy tenant for any land covered by a grove. In these circumstances the question of transfer is not relevant at all. It has nothing to do with the present question whatsoever, because the moment an occupancy tenant transfers his rights in a grove and the other man takes charge of it, he will certainly not be entered as tenant with the right of occupancy, nor will that tenant be shown as such in the annual register even by that inefficient staff which conducts all these proceedings today. With these words I ask the Council to accept the amendment, as it is in the interests of justice and fair play that such an amendment should find a place in the Bill.

Hon'ble Sir Sam O'Donnell: I think Mr. Burn's arguments have been quite conclusive. He pointed out that the Bill will not take away any rights which have already accrued. If occupancy rights have already accrued, those rights will be preserved. But he objected to the provision in the amendment under which entries in the annual registers will be made conclusive proof. I should be the last person to depreciate the value of entries in the annual registers. I regard the maintenance of these registers as absolutely essential for the welfare of these provinces. But, on the other hand, it has never been the practice to treat the entries as absolutely conclusive. They are valuable entries, but they are not evidence which cannot be rebutted. I fail to see how the addition of the words that the tenant has paid rent to the landlord in any way alters the position.

Question, that at the end of sub-clause (i) of clause 197 the words "except that where a grove exists, at the time of commencement of this Act, on occupancy land and the land appurtenant thereto is entered as the land of an occupancy tenant in the annual registers maintained under the Land Revenue Act and the tenant is paying rent to his landlord on its account, it will not cease to be part of his occupancy holding when it ceases to be grove-land" be added put and negatived.

Bhaya Hanumat Prasad Singh: I rise to move that at the end of clause 197 the following be added :—

"(j) when the grove land ceases to hold the character of a grove, the grove-holder shall be held liable to ejectment by the landholder."

The grove-holder is one who occupies the land with the express or implied permission of the landholder to plant trees on it. If the tenant removes or cuts the trees from the grove-land he should be liable to ejectment from that land, because he got it with the clear object of planting trees on it and not for the purpose of cultivation. If he cultivates the land after removing the trees he should be liable to ejectment. With these few remarks I move the amendment and I hope the House will accept it.

Mr. R. Burn: This amendment also appears to be unnecessary. This chapter gives a definition of grove-holder and of the contract between a grove-holder and the landlord. If honourable members will turn to clause 197 (a) they will find it lays down that it shall be presumed that a grove-holder holds the land in respect of which he is grove-holder under a lease the term of which will expire when the land ceases to be grove-land.

This chapter does not say anything at all about what class of tenant he should become then. Clause 86, sub-clause (1), lays down that a non-occupancy tenant holding under a lease is liable to ejectment on the expiry of the lease. That is the position of the grove-holder. If when the grove is cut down no fresh contract is entered into between the landlord and the former grove-holder, there is not the least doubt that under clause 86 he is liable to ejectment.

Bhaya Hanumat Prasad Singh : What about those grove-lands the trees in which were planted before the commencement of the Act and, further, in respect of which there is no written permission?

Mr. R. Burn : The present law is exactly the same. It sometimes is the case that a *wajib-ul-arz* lays down that when a grove is cut down the tenant may be allowed to stay on at a certain rent. In the majority of cases, however, when the grove is cut, if the man stays on the land and starts cultivating it, he is a trespasser, and unless he gets permission from the landlord or enters into a fresh lease, his position remains that of a trespasser. The Act does not make any change in customs and contracts entered into between the parties before the Act took effect.

Bhaya Hanumat Prasad Singh : The honourable member of the Board of Revenue has said that if the trees are removed from a certain grove-land, the tenant will be ejected from that plot of land with regard to which the *wajib-ul-arz* points out that after the removal of the trees the tenant is liable to ejectment. But he has said nothing as to how the tenants holding grove-land in those villages in respect of which the *wajib-ul-arz* does not point out anything about the grove-lands will be treated. There are a number of such grove-lands about which the *wajib-ul-arz* says nothing clearly, and at the same time no written lease with regard to them was executed previous to the passing of this Bill. Sir, I wish to know how a tenant who cuts the trees of such grove-land as with regard to which no mention of any kind is found in the *wajib-ul-arz* and begins to cultivate that plot will be treated.

Hon'ble Sir Sam O'Donnell : If the *wajib-ul-arz* is silent, there is a presumption that the tenant is liable to be ejected when the land ceases to be a grove.

Amendment, by leave, withdrawn.

Hon'ble Sir Sam O'Donnell : I beg to move a purely consequential amendment, namely, that sub-clauses (g), (h) and (i) be re-lettered (f), (g) and (h) respectively.

Question, that sub-clauses (g), (h) and (i) be re-lettered (f), (g) and (h) respectively, put and agreed to.

Question, that clause 197, as amended, stand part of the Bill, put and agreed to.

CLAUSE 198.

198. Whenever it is found in any suit or other proceeding relating to grove-land that such land is held by a person who has no proprietary right therein, the court may presume that he holds such land as a grove-holder.

*Presumption regard-
ing grove-land.*

Question put that clause 198 stand part of the Bill.

The House divided: Ayes, 39; Noes, 25.

[Hon'ble Sir Sam O'Donnell.]

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Sai'd Khan.
Hon'ble Rai Rajeshwar Ball.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.
Mr. M. F. P. Herochenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Babu Narayan Prasad Arora.
Babu Mohan Lal Saksena.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Sri Krishna Dutt Paliwal.
Babu Parsidh Narayan Anad.
Rai Bahadur Thakur Hanuman Singh.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Maulvi Zahur-ud-din.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Noes.

Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Thakur Rajkumar Singh.
Rai Amba Prasad Sahib.
Rao Sahib Kunwar Sardar Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan
Singh, Rai Bahadur.
Bhaya Hanumant Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam
Saifi.
Rao Sahib Abdul Hameed Khan.
Nawabzada Muhammad E'jaz Ali Khan.

Khan Bahadur Chaudhri Amir Hasan
Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman
Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Salyid Muhammad Ashiq
Husain.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad
Rashid-ud-din Ashraf.
Rai Bahadur Lala Mathura Prasad
Mehrotra.

CLAUSE 199.

Question, that clause 199 stand part, put and agreed to.

CLAUSE 200.

200. A theka may be made only by a written instrument executed by the landlord.

Method of granting
thekas.

Khan Bahadur Hafiz Hidayat Husain: I beg to move that in clause 200 for the word "written" the word "registered" be substituted. That will be in keeping with clause 183 which we have just passed. Under 219 (2) of this Bill a theka is deemed to be a lease within the meaning of section 107 of the Transfer of Property Act, and section 107 of the Transfer of Property Act provides for registration of leases exceeding one year or reserving a yearly rent.

Mr. R. Burn: The effect of this amendment would be to require all thekas to be registered under the Indian Registration Act. It seems to me that having regard to the very large number of small thekas which are given in certain parts of the provinces, it is unnecessary to insist on this provision. The position, as the Bill stands, would be that all thekas for terms exceeding ten years and stipulating for rent exceeding

Rs. 100 annually have to be registered under the Indian Registration Act. Thekas for terms exceeding one year or from year to year or reserving a yearly rent will require attestation if they do not fall in the first category, and thekas for one year or less which are not from year to year and which do not reserve a yearly rent do not require registration or attestation. The Bill simply follows the ordinary rule in force at present, i.e., short-term leases need be not registered, and there hardly seems any reason for making the requirements for registration more exacting in the case of agricultural leases than it is in the case of other immovable property.

Khan Bahadur Hafiz Hidayat Husain : I have not said that registration should always be effected under the Indian Registration Act. It was stated by the Hon'ble the Finance Member in connexion with another clause that registration might be effected in several other ways. Therefore it is not necessary that thekas should be registered under the Indian Registration Act. According to the latest ruling of the High Court a thekadar cannot be ejected except by a civil court. Previously what the revenue court used to do was to treat the thekadar as a sub-tenant, but now under the ruling of the High Court a thekadar's position for the purposes of ejectment is not that of a sub-tenant. The position of a thekadar having now been determined to be that of a *quasi*-proprietor, the lease in his favour should also be controlled by the general law and not the special law. For these reasons I press my amendment.

Hon'ble Sir Sam O'Donnell : I think the honourable mover misunderstood what I said while speaking on another clause. I did not say that registration could be effected otherwise than under the Indian Registration Act. I said that the word "registration" meant "registration under the Indian Registration Act." As regards the substance of the proposal, as Mr. Burn has pointed out, it is only in the cases of thekas or leases which are not from year to year and which do not reserve a yearly rent that registration will not be required. The Bill merely follows the ordinary rule that short-term leases need not be registered. There is no reason for making the Registration Act more exacting in the case of agricultural leases than in the case of other movable properties.

Question that the word "written" stand part of the Bill put and agreed to.

Question that clause 200 stand part of the Bill put and agreed to.

CLAUSES 201 AND 202.

Question that clauses 201 and 202 stand part of the Bill put and agreed to.

CLAUSE 203.

203. (1) Except as may be otherwise provided by the terms of the theka, the interest of a thekadar—

Rights of transfer
and succession.

(a) shall not be transferable,

(b) unless the theka has been given on payment of a premium shall not be heritable.

(2) Where a thekadar's interest is heritable it shall devolve as if it were land so far as is consistent with the retention by the *landlord* of a right or possibility of reversion.

Babu Nemi Saran : I beg to move that in clause 203 (1) (a) after the comma be added the words "but in the case of a heritable theka if the thekadar dies leaving a widow or only minor son or sons, such widow or minor sons shall be entitled to sub-let the theka for the remaining term of theka or till the sons attain majority, whichever period be less." Sir, in this connexion I have only to say that in the case of widows and minor sons it is very difficult to manage one's own property, and it would be far more difficult to manage a theka. One can easily realize the position of a minor son of an ambitious thekadar who might have taken leases of many villages and died a premature death. The minor son must be finding himself in a very difficult position as regards the management of that theka. In that case I want that the minor son or widow should be entitled to sub-let the theka without the permission of the landlord. This is quite reasonable, and I hope that it will receive the support of the House.

Khan Bahadur Hafiz Hidayat Husain : I beg to move that clause 203 be deleted and the following be substituted instead :—"Except as may be otherwise provided by the terms of the theka, the interest of a thekadar shall not be transferable by act *inter vivos* or be saleable in execution of a decree, but shall devolve on inheritance as if it were land, so far as is consistent with the retention by the landlord of a right or possibility of reversion." The status of a thekadar is analogous to that of a landlord. A thekadar is put in because his special services are needed by the proprietor, the man who gives the theka. Therefore I think that, although during his lifetime a thekadar may, for this reason, be debarred from transferring his right or having his rights sold in execution of a decree, his interest after death should devolve on his heirs. In certain thekanamas a provision is put to provide for resumption on certain contingencies happening, e. g., death of the thekadar. My amendment provides that those contracts in which a provision like this has been put shall be respected. If there is a contract like this, the property will revert to the zamindar, the grantor of the theka. Excepting this possibility of reversion, I think the interests of a thekadar, which are more or less that of a proprietor, should be treated as if they were land.

Pandit Govind Ballabh Pant : There is an amendment in my name (No. 143 in the old list) which is almost identical with that of Hafiz Hidayat Husain, but in which there is less of originality, as it keeps to the language of the Bill as it is. I propose that sub-clause (b) be omitted and the words "where a thekadar's interest is" be omitted from sub-clause (2), and insert after the word "transferable" the words "but it will be" and insert "and" between "heritable" and "it". The clause will then read as follows :—

"Except as may be otherwise provided by the terms of the theka, the interest of a thekadar shall not be transferable, but it will be heritable and it shall devolve as if it were land so far as is consistent with the retention by the landlord of a right or possibility of reversion."

Hon'ble the President : It is practically the same as the amendment of Khan Bahadur Hafiz Hidayat Husain.

Pandit Govind Ballabh Pant : Only the language is different.

Babu Nemi Saran : My amendment relates to sub-clause (a). That after the comma add "but in the case of a heritable theka if the thekadar

dies leaving a widow or only minor son or sons, such widow or minor sons shall be entitled to sub-let the theka for the remaining term of theka or till the sons attain majority, whichever period be less."

Hon'ble the President: I think the amendment as drafted is not quite correct. I will, however, put the amendment to the House and am not ruling it out of order. I think the amendment which Pandit Govind Ballabh Pant wishes to move is the same as that of Hafiz Hidayat Husain.

Pandit Govind Ballabh Pant: No, Sir. I stick to my own amendment.

Hon'ble the President: Does the amendment of Hafiz Hidayat Husain touch clause (a) at all?

Khan Bahadur Hafiz Hidayat Husain: No, Sir.

Hon'ble the President: Then I think I had better take Hafiz Hidayat Husain's amendment later.

Hon'ble Sir Sam O'Donnell: I shall speak later on the question whether all thekas should be heritable or not. But there is nothing really to be said for the particular amendment which Mr. Nemi Saran has put up. He says:—"in the case of a heritable theka if the thekadar dies leaving a widow or only minor son or sons, such widow or minor sons shall be entitled to sub-let the theka for the remaining term of theka or till the sons attain majority, whichever period be less." Now the parties can, of course, make any contract they like when the theka is given. They can if they like provide that when the thekadar dies leaving a widow or minor son, the widow or minor son can sub-let. But I really cannot see if the theka does not give such a power why the law should lay down that in every such case the widow or minor son should be entitled to sub-let. I cannot see on what principle that can be justified.

Hon'ble the President: I think the best course would be for Hafiz Hidayat Husain to move this amendment in the following form. The language is the same; he only wants that the words "by act *inter vivos*" be added. I personally do not like the substitution of the whole clause by taking words from the original Bill and incorporating them in the amendment. Would you like to move your amendment as an amendment to Babu Nemi Saran by adding the words "by act *inter vivos* or be saleable in execution of a decree?" The honourable member has confused the two things together.

Khan Bahadur Hafiz Hidayat Husain: I beg to move that the following words be inserted in clause 203 "by act *inter vivos* or be saleable in execution of a decree."

Hon'ble Sir Sam O'Donnell: Would the honourable mover have any objection to leaving out the words "*inter vivos*;" they seem to be inappropriate? These Latin words do not seem to be very appropriate in an Act.

Khan Bahadur Hafiz Hidayat Husain: I will delete those words. I now move that the following be added "or be saleable in execution of a decree."

Pandit Govind Ballabh Pant : My amendment practically applies to the latter part. I oppose Khan Bahadur Hafiz Hidayat Husain's amendment and I will speak on it. I am not prepared to support the amendment moved by the honourable member for Cawnpore that the words "or be saleable in execution of a decree" be added after the word "transferable" in clause (a). If such a provision finds a place in this Bill, I do not exactly understand what will be the meaning of the present clause. I am not prepared to hold finally that it would bar sales of the interest of the thekadar in the execution of a decree, but it seems to me it should be opening the way for fraud if we say that a thekadar's interest shall not be transferable in the execution of a decree, if there is no provision like that in a theka. It is a matter which affects the community at large and does not affect the landlords or the tenants in particular. What strikes me is something like this. A thekadar, assume for a moment, has at present to pay about Rs. 10,000 and has got some Rs. 6,000 or Rs. 7,000 at his disposal. He goes to the landlord, gives Rs. 6,000 or Rs. 7,000 by way of a premium, obtains a theka and then goes on enjoying the profits of the theka say for 15, 20 or 30 years. So it is not open to the creditor to put his interest in the theka to sale and the decree is defeated and the amount cannot be realized. It seems to me that a theka would very likely be used as a handle for defeating the rightful claims of the person to whom money may be due, if it is said that such title may not be used in the execution of a decree. It would in fact be provided in the theka that the interest will not be transferable, simply to use it for fraudulent purposes in order to defeat the claims of others. So I think the amendment proposed by Hafiz Hidayat Husain is not of a wholesome character.

Khan Bahadur Mr. Muhammad Ismail : In my humble opinion this is a most important amendment. The property is given to a thekadar because he is a reliable and trustworthy man suitable for the management of the estate. Now, if the theka property which belongs to a third person, is liable to be sold in execution of a decree against the thekadar and passed on from hand to hand without the consent of the owner, it will lead to most disastrous consequences. That was never the intention of the law, and if there is such a law, I think it is a most undesirable law. I hope the honourable member will withdraw his opposition to this.

Hon'ble Sir Sam O'Donnell : I should have thought that if the interest of a thekadar was not transferable, that it could not be sold in execution of a decree. I should have thought that was the natural interpretation. But anyhow, I see no objection to the insertion of the words "or saleable in execution of a decree." I quite agree with Khan Bahadur Hafiz Hidayat Husain that it is very undesirable that the interest of the thekadar should be sold in execution of a decree; the landlord gives a theka to a particular person in whom he has confidence, and it will be very hard on the landlord if the theka is sold to some person in whom he has no confidence and who, in his opinion, is not a suitable man to become a thekadar. I thought that the words "shall not be transferable" were quite sufficient, but if there is any doubt on the point it is just as well to put in the words "or saleable in execution of a decree."

Babu Nemi Saran : I am not very keen about my amendment which I have moved, but I wanted to bring to the notice of the Government.

Hon'ble the President: If the honourable member is not very keen, he had better withdraw it.

Babu Nemi Saran : I am certainly not very keen about it, but I want to bring some points to the notice of the Hon'ble the Finance Member and I also want to mention some facts for his information so that he may perhaps find it possible to accept my amendment. In case he does not, I will withdraw it. We know that the position of the minor and the widow has got to be safeguarded and it is safeguarded really in every law. In these cases we can better realize the position of a person who enters into a certain contract. He does not foresee such calamities. Sometimes he thinks it not very auspicious to have such terms entered in the theka, and naturally it is the tendency among Indians that they do not want such things to be written in an instrument as "if I die, the holding will go to so and so." The second point is this. It may be argued that if there is no such entry in the theka document, then the son or the widow may relinquish the theka if they like to do so. The thekadar does invest a certain amount of money and it will be very hard on the minor or the widow to run the risk of pecuniary loss by relinquishing theka so prematurely, and it is necessary in the interests of justice to these two kinds of persons who are not capable of safeguarding their interests as the others are that we should safeguard their interests and hence I think that there should be some laxity in the law in their case.

Hon'ble Sir Sam O'Donnell: There is a good deal to be said for making reasonable provision for the minors and widows of tenants of agricultural land who are small people with small incomes. But I do not see why a thekadar who holds three or four hundred acres of land should not look after his own interests and the interests of his son and widow. If he does not, his son and widow may suffer; that would be unfortunate, but does not appear to be a sufficient ground for conferring rights on widow and son which are not conferred by the contract.

Babu Nemi Saran : I withdraw my amendment.

Amendment by leave withdrawn.

Question that in sub-clause (a), after the word "transferable" the words "or be saleable in execution of a decree" be inserted, put and agreed to.

Pandit Govind Ballabh Pant : I beg to move that sub-clause (b) be omitted and in sub-clause (2) the words "where a thekadar's interest is" be omitted and in their place after the word "transferable" the words "but it will be" be inserted and also the word "and" be inserted between the words "heritable" and "it". . . .

It will then read—

" . . . but it will be heritable and it shall devolve as if it were land so far as is consistent with the retention by the landlord of a right or possibility of reversion."

By this amendment I propose to provide that unless the theka says that the interest of the thekadar will not be heritable, a presumption will be that the thekadar's interests will be heritable. A provision will have to be made in the lease that the thekadar's interest shall not be heritable, where the parties agree that they shall not be heritable; otherwise the courts shall have to proceed on the assumption that they shall be

[Pandit Govind Ballabh Pant.]

heritable. It seems to me that a theka is not in any way distinguishable from other leases. That is the provision of the present Act, and I can see no reason why such a provision should not find a place in this Bill. I think it is a pernicious principle to make the rights of individuals, so far as the principle of heredity is concerned, dependent on their contract. Ordinarily all subsisting rights should be presumed to be hereditary. It is open to the parties to contract themselves out of it, but where they do not do so, the presumption should be that the rights that are held by any man, and which have not come to an end yet, will be inherited by those on whom his rights will devolve after his death. I find that some of my honourable friends here are not prepared to take my view. I will refer them to an authority which should be regarded as conclusive by them if not sacrosanct. The Agra Province Zamindars' Association has issued a note on the Agra Tenancy Bill in which they say that (b) of sub-clause (1) of clause 203 should be omitted.

Kunwar Jagdish Prasad : Where is that association ?

Pandit Govind Ballabh Pant : I do not know where that association is, but it says Allahabad, and I think that Allahabad is not yet dead for all purposes. I do not think that all their proposals are interlinked. I think that, so far as this particular clause is concerned, they had considered it on its merits. However, there are gentlemen here who are better acquainted with its activities or whatever they may be doing ; but I am not concerned with it. There is a clause in that note which says that clause (b) of sub-section (1) of this section should be deleted, and this is followed by certain remarks. It says that this clause is objectionably injurious, as a theka in all cases must be heritable until the expiry of the theka. So far as this proposal is concerned, they are not prepared to give even liberty to the parties to contract themselves out of the heredity, which should be an incidental part of every theka, but I do not go as far as that, leaving it to my honourable friends to amend my amendment on that line. So far as my proposal goes, it is only this, that, unless there is something to the contrary in the theka, it must be presumed that the theka is heritable. I do not think that, in the face of this quotation from something which must naturally be entitled to the utmost weight and which is the result of the wisdom and collective intelligence of a number of gentlemen who are better acquainted with these things than I am, I should have the audacity of putting forward arguments of my own.

Khan Bahadur Mr. Muhammad Ismail : The collective intelligence of the honourable members is all that matters. We have nothing to do with what has been considered by any other association, whether it be the swaraj association, the zamindars' association or the tenants' association ; that is all out of the question. What is the position of a thekadar ? A thekadar gets a certain amount of percentage for the labour, that is all ; he has no more interest in the property unless he pays a premium. If he pays a premium, naturally his family is interested and not otherwise. The Bill as it stands has made a provision for such cases where a thekadar has paid a premium, and it is only in that case that the theka will be heritable, not otherwise. If the amendment of my honourable friend, the member for Naini Tal, were allowed, then it means that, in every case, although the thekadar has got no vested interest in the property, the pre-

sumption should be that it is heritable, that is to say, somebody else's property is heritable in the family of the thekadar. This is a most extraordinary proposition, to say the least of it. I submit that all the necessary safeguards in the interests of the thekadar have been made and nothing more is required. While dealing with the provisions of this Bill, we should not place the zamindars on one side and the rest of the world on the other. Whatever class may be benefited, the zamindar must be victimized. It may be in the interests of anybody; as long as it hurts the zamindar, it is all well and good. My submission is that this should not be the object. We should be fair and we should see that those who have got vested interests receive proper protection.

Khan Bahadur Shaikh Masud-uz-Zaman: I think theka is given on the personal merit of the individual. It is not given with a view to raise loans or mortgages. I say it is not generally done. As a rule it is given on the personal merit of the thekadar for the administration of the villages or land given in theka. In these circumstances it will be extremely unfair that without any provision in the contract it may be presumed that the theka is heritable. If such a need appears to the parties or if a premium has been advanced, the thekadar will take jolly good care to protect his interest and make it a condition in the theka that it will be heritable. So unless there is such a condition in the theka, it should not be heritable. I think that is the presumption that should be taken *ipso facto*. For this reason I oppose the amendment.

Hon'ble Sir Sam O'Donnell: Under the present law thekas are heritable unless there is something to the contrary in the contract. The 1924 committee went into this matter carefully and they came to the conclusion that the interest of a thekadar should not be heritable except when a theka has been given on payment of a premium. They roughly divided the thekas into two classes: first, those of the nature of *zar-i-peshgi* leases, and second, those which were little more than arrangements made with an agent by the proprietor for the greater convenience of the latter in realizing his rents. They held that thekas of the second kind should not be heritable, for if they were, the arrangement would be prejudicial to the interests of minor heirs, who could not manage the property. I think that is a reasonable view to take of the matter. If the parties wish to make the interests of the thekadar heritable, we cannot stop them; they can make any contract they like; but if there is no contract on the matter, I think, so far as the thekas in which there is no such provision are concerned, we will do well if we follow the 1924 committee.

Pandit Govind Ballabh Pant: It was the unkindest cut of all that Mr. Ismail should have said that so long as anything hurts the zamindar, it must be pressed by some one of us here, whether it was of any advantage to anybody or not. If it had proceeded from someone else, I would have tried to offer something by way of explanation or tried to remove his doubts, but as it proceeds from him, I leave it to him to weigh his words and to sleep over them for the night and to reconsider his remarks in the morning tomorrow when he is in a better mood and perhaps more refreshed. As it is at present, I think I am not altogether supporting a forlorn cause, nor am I in the company of altogether abandoned people when I find that my friend Khan Bahadur Hafiz Hidayat Husain had anticipated me in this respect and his amendment is identically in the same terms as mine. So when he is one of those mischief-mongers

[Pandit Govind Ballah Pant.]

whose only interest is to injure the most powerful party in the province today, then I on my part am prepared to plead guilty to the charge which has been levelled at me. As to the Agra Zamindars' Association, I was under the impression that it was somehow interested in the welfare of the zamindars, but now I find that they too consist of people who are inclined in a vicious manner such as we are ourselves in this House. I am not so very sorry for it. As to the amendment itself again it is said that it will be detrimental to the interests of the zamindars. I put it to my honourable friends whether thekadar are ordinary tenants or zamindars. If thekadar are ordinary tenants and it is the zamindars against whom the leases are given, then of course it is a reasonable argument to advance that the zamindars should suffer thereby. So far as my little experience goes, I have invariably found persons who are themselves zamindars taking thekas of villages in their neighbourhood. So, if it is to affect any community as a community, it is certainly the zamindar, but at the time he takes a theka he ceases to have perhaps that particular label. But all the same we should not forget that he is a zamindar and he is a man whose welfare should be looked after because of his being a zamindar, if not for anything else. I am prepared to look at the question in the proper manner even if he is not a zamindar, but I do so all the more because he is a zamindar. I do not at all understand the position of my honourable friend. Even a non-occupancy tenant has heritable rights. He is a man who can be turned out of his holding this moment. He is a man who has not perhaps spent the same amount of time, labour and energy over his holding as a thekadar has, who has taken a theka for a considerable length of time. If a non-occupancy tenant is entitled to hold the land and to have his interest in that land so long as he is alive, and if he passes his interest to his heirs, there is no reason why a theka, unless the landholder and the thekadar have agreed on the point and have made a provision in the theka that it will not be heritable, should not be heritable. It affects the general principle, and that is the only reason why I have moved this amendment. Ordinarily, the principle of heredity should be presumed to apply to all sorts of rights possessed by individuals at the time of death, and unless and until there is something to the contrary, every right that a man possesses should be presumed to be such that on his death it passes on to his heirs. We are not in any way prejudicing the zamindars. Whoever wants to give a theka will be able to make a provision to that effect in the theka if he does not want his heir to succeed. But where there is no provision like this, as is generally the case, all rights should be regarded as being heritable; and as it is a sacred principle that touches all matters affecting heredity, it is but right and proper that it should be conceded even in the case of thekadar. I personally think that a provision like this would be more equitable and more to the advantage of the persons who are thekadar; for in the world nothing shall fetch a better price than the transfer of rights where there is some durability behind, where there is some definiteness and certainty. Unless the parties definitely undertake that rights will not be heritable, I think this is the general principle of law that all rights should be presumed to be heritable. After all, thekas of landed properties are more or less of the same sort as leases under the Transfer of Property Act are. In one case it is the agricultural villages that are let out, while

in the other case it may be property of other sorts, of course, in both cases belonging to capitalists and better-to-do classes. So I do not see any reason why the general principle of heredity should not apply to thekaders. I may assure my honourable friends that I am not yet aware of any particular community of thekaders in whom we may be specially interested.

Question that the words in clause 203 as reported by the select committee stand part of the Bill put and agreed to.

Question that clause 203 stand part of the Bill put and agreed to.

CLAUSES 204 TO 213.

Question that clauses 204, 205, 206, 207, 208, 209, 210, 211, 212 and 213 stand part of the Bill put and agreed to.

CLAUSE 214.

214. In the absence of anything to the contrary in the terms of the theka—
Improvements.

- (a) a landlord, notwithstanding the theka, may make any improvement on or affecting the theka area which he is entitled under section 115 to make,
- (b) a thekadar may *with the written consent of the landlord* make any improvement which the *landlord* could lawfully make.

Babu Nemi Saran : I beg to move that at the end of the sub-clause the following words be added: "but he shall be liable to compensate the thekadar for any loss which he may cause to the thekadar when making such improvement." Clause 214 (a) says: "A landlord, notwithstanding the theka, may make any improvement on or affecting the theka area which he is entitled under section 115 to make," that is, even without the consent of the thekadar. If we go to clause 115 you see there is provided in sub-clause (3) "A landlord making an improvement on or affecting the holding of any tenant shall be liable to compensate the tenant for any loss which he may cause to the tenant when making it." So I think the same principle of equity should apply, and if there are works which may be called improvements and by which the thekadar might be substantially injured, in that case the landlord should be made liable to compensate the thekadar. There are many works which may be called improvements and in the making of which there might be taken a good deal of time and a good deal of injury might be done to certain other holdings or property in a village, and on account of that the thekadar might not be able to realize the rent he otherwise would have been able to do. In such a case the landlord should pay the thekadar, who is entitled to it, compensation for the injury. It is with this view I have moved this amendment.

Hon'ble Sir Sam O'Donnell : It seems to me that the answer is that the thekadar takes the land subject to this clause; that is, he knows that the man from whom he is taking the theka can make certain improvements. It is improbable that the result of the improvements would be injurious to the thekadar. It is hardly likely that the landlord would make improvements which would benefit one piece of land and seriously injure another piece of land, because in that case the landlord would himself suffer. But whatever the result, it seems to me that the remedy

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is for the thekadar to provide for this contingency in the contract. If he does not do so he takes the land subject to the liability of improvements being made by the landlord.

Amendment by leave withdrawn.

Question that clause 214 stand part of the Bill put and agreed to.

CLAUSES 214 TO 220.

Question that clauses 214, 215, 216, 217, 218, 219 and 220 stand part of the Bill put and agreed to.

The Council was then adjourned to the following day.

APPENDIX A.

(See page 767 supra.)

(Statement referred to in answer to starred question No. 46 of July 26, 1926.)

Allotment for special assistance to pilgrim centres during 1925-26—
Rs. 1,00,000.

EXPENDITURE IN 1925-26.

	Rs.
(1) Soron municipality (district Etah)—Towards the Har-ki-pairi tank improvement scheme	5,988 2,176 1,988 3,221
(2) Benares municipality—Towards the Infectious diseases hospital	7,075
(3) Nimsar town (district Sitapur)—Towards the tank drainage scheme	379
(4) Garhwal—Towards the Sadabart fund	25,500
(5) Hardwar Union—Towards the Infectious diseases hospital	18,000
Total	68,677
Re-appropriated to the head "Urban sanitation" at the close of the year and utilized	86,828
GRAND TOTAL	1,00,000

APPENDIX B.

(See page 767 supra.)

(Statement referred to in answer to starred question No. 47 of July 26, 1926.)

	Rs.
(1) To Director of Public Health for cinema films for exhibition purposes at fairs	10,000
(2) Gola Gokaran Nath (district Kheri)—Towards the tank improvement and water-supply scheme	8,804
(3) Nimsar town (district Sitapur)—Towards the tank improvement scheme	2,500
(4) Garhwal—Towards the Sadabart fund	55,500
Total	71,804

APPENDIX C.

(See page 774 supra.)

Statement referred to in the answer to starred question No. 75 for July 26, 1926.

List of permanent and officiating prosecuting inspectors on July 1, 1926.

No.	District.	Hindu.	Muslim.	Christian.	No.	District.	Hindu.	Muslim.	Christian.
1	Dehra Dun ..	1	..	..	37	Rae Bareli ..	1	..	..
2	Saharanpur ..	1	..	..	38	Sitapur ..	..	1	..
3	Muzaffarnagar ..	1	..	..	39	Hardoi ..	2*	..	..
4	Meerut ..	1	..	..	40	Kheri ..	1	..	..
5	Bulandshahr ..	..	1	..	41	Fyzabad ..	1*	1	..
6	Aligarh ..	..	..	1	42	Gonda ..	1	..	..
7	Muttra ..	..	1	..	43	Bahraich ..	1	..	..
8	Agra ..	1	..	..	44	Sultanpur ..	..	1	..
9	Mainpuri ..	2*	..	..	45	Partabgarh ..	..	1	..
10	Etah ..	1	..	..	46	Bara Banki ..	1	..	..
11	Bareilly ..	1	..	..	47	Criminal Investigation department, Allahabad.	2	2	..
12	Bijnor ..	1	..	..			
13	Budaun ..	1	..	..	48	Government Railway Police office, Allahabad.			
14	Moradabad ..	1	..	..			
15	Shahjahanpur ..	1	..	..	49	Government Railway Police, Section A, Agra.			
16	Pilibhit ..	1	..	..			
17	Farrukhabad ..	..	1	..	50	Government Railway Police, Section B, Lucknow.	4	..	..
18	Etawah ..	..	1	..					
19	Cawnpore ..	..	1	..	51	Government Railway Police, Section C, Gorakhpur.			
20	Fatehpur ..	1	..	..			
21	Allahabad ..	..	..	..	52	Government Railway Police. Sub-section, Bareilly.			
22	Jhansi ..	1	..	..			
23	Jalaun ..	1	..	..	53	Police Training School, Moradabad.	3	..	..
24	Hamirpur ..	1	..	..			
25	Banda ..	..	1	..		Special police.	1	..	..
26	Benares ..	1	..	..			
27	Mirzapur ..	1	..	..			
28	Jaunpur ..	1	..	..			
29	Ghazipur ..	1	..	..			
30	Ballia ..	1	..	..			
31	Gorakhpur ..	1	..	..			
32	Basti ..	..	1	..					
33	Asamgarh ..	1	..	..			
34	Kumaun division, Naini Tal.	1	..	..			
35	Lucknow ..	1	..	..			
36	Unao ..	..	1	..					
						Total ..	45	15	1

* One extra for gang case.

*Statement referred to in the answer to starred question No. 75 for
July 26, 1926.*

*List of prosecuting sub-inspectors of police as it stood in the months of
March and April, 1925.*

No.	District.	Hindu.	Muslim.	Christian.	No.	District.	Hindu.	Muslim.	Christian.
1	Dehra Dun ..	1	..	..	35	Lucknow ..	3	..	..
2	Saharanpur ..	2	1	..	36	Unao ..	1	1	..
3	Muzaffarnagar ..	1	..	..	37	Rae Bareilly ..	1	1	..
4	Meerut ..	3	1	..	38	Sitapur ..	..	..	..
5	Bulandshahr ..	1	1	..	39	Hardoi ..	1	2	..
6	Aligarh ..	2	1	..	40	Kheri ..	2	..	..
7	Muttra ..	1	..	..	41	Fyzabad ..	2	..	..
8	Agra ..	2	1	..	42	Gonda ..	2	..	..
9	Mainpuri ..	2	..	..	43	Bahraich ..	1	1	..
10	Etah ..	2	..	..	44	Sultanpur ..	..	1	..
11	Bareilly ..	3	..	..	45	Partabgarh ..	1	..	..
12	Bijnor ..	2	..	..	46	Bara Banki ..	1	1	..
13	Budaun ..	1	1	..	47	Criminal Investigation department.	..	..	..
14	Moradabad ..	3	..	..	48	Government Railway Police office, Allahabad.	..	..	..
15	Shahjahanpur ..	2	..	..	49	Government Railway Police, Section A, Agra.	1	..	..
16	Pilibhit ..	1	..	..	50	Government Railway Police, Section B, Lucknow.	..	..	..
17	Farrukhabad ..	1	2	..	51	Government Railway Police, Section C, Gorakhpur.	1	..	..
18	Etawah ..	2	..	..	52	Government Railway Police, Sub-section, Bareilly.	..	..	..
19	Cawnpore ..	3	..	..	53	Police Training School, Moradabad.	..	..	..
20	Fatehpur ..	1	..	..			
21	Allahabad ..	4	..	..			
22	Jhansi ..	1	1	..					
23	Jalaun ..	1	..	..			
24	Hamirpur ..	1	1	..					
25	Banda ..	2	..	..			
26	Benares ..	2	1	..					
27	Mirzapur ..	2	..	..			
28	Jaunpur ..	..	1	..					
29	Ghazipur ..	2	..	..			
30	Ballia ..	1	1	..					
31	Gorakhpur ..	3	2	..					
32	Basti ..	2	1	..					
33	Azamgarh ..	2	1	..					
34	Kumaun division, Naini Tal.	2	..	..			
						Total ..	79	24	..

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Tuesday, July 27, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m.,
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(75)

<p>Hon'ble Sir Sam O'Donnell. Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan. Hon'ble Rai Rajeshwar Bali. Hon'ble Thakur Rajendra Singh. Hon'ble Nawab Muhammad Yusuf. Mr. G. B. Lambert. Mr. E. A. H. Blunt. Kunwar Jagdish Prasad. Sir Ivo Elliott, Bart. Mr. P. H. Tillard. Mr. H. A. Lane. Mr. R. L. Yorko. Mr. R. Burn. Mr. A. W. Pim. Mr. B. J. K. Hallows. Mr. H. G. Bullion. Mr. R. J. S. Dodd. Colonel A. W. R. Cochrane. Mr. A. H. Mackenzie. Mr. M. F. P. Herchenroder. Mr. H. O. Desanges. Mr. H. David. Babu Khem Chand. Babu Narayan Prasad Arora. Babu Mohan Lal Saksena. Babu Jai Narayan Chaudhri. Babu Bhagwati Sahai Bedar. Thakur Manjit Singh Rathor. Rai Jagdish Prasad Sahib. Chaudhri Jaswant Singh. Pandit Nanak Chand. Thakur Rajkumar Singh. Thakur Shiva Narayan Singh. Rai Bahadur Babu Ram Nath Bhargava. Rai Amba Prasad Sahib. Rai Bahadur Pandit Kharagjit Misra. Raja Suryapal Singh. Babu Nemi Saran. Chaudhri Badau Singh. Rao Sahib Kunwar Sardar Singh. Thakur Sadho Singh.</p>	<p>Pandit Jhanni Lal Pande. Lieut. Raja Durga Narayan Singh. Raja Narayan Pratap Singh. Pandit Sri Krishna Dutt Paliwal. Babu Parsidh Narayan Anad. Pandit Yajna Narayan Upadhyaya. Rai Sabib Babu Dip Narayan Roy. Rai Bahadur Thakur Hanuman Singh. 2nd-Lieut. Sahibzada Kavi Pratap Narayan Singh, Rai Bahadur. Bhaya Hanumat Prasad Singh. Pandit Govind Ballabh Pant. Pandit Har Govind Pant. Babu Ram Chandra Sinha. Khan Bahadur Mr. Muhammad Aslam Saifi. Maulvi Zahur-ud-din. Rao Sahib Abdul Hameed Khan. Nawabsada Muhammad E'jaz Ali Khan. Khan Bahadur Chaudhri Amir Hasan Khan. Mr. Muhammad Ismail / Ali Khan. Maulvi Muhammad Obaid-ur-Rahman Khan. Dr. Zia ud-din Ahmad. Khan Bahadur Hafiz Midayat Husain. Khan Bahadur Shaikh Masud-uz-Zaman. Khan Bahadur Mr. Muhammad Ismail. Khan Bahadur Saliyd Muhammad Ashiq Husain. Khan Bahadur Mr. Ashiq Husain Mirza. Khan Bahadur Munshi Siddiq Ahmad. Qazi Habib Ashraf. Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf. Rai Bahadur Lala Mathura Prasad, Mehrotra. Raja Jagannath Bakhsh Singh. Mr. E. M. Souter. Mr. Tracey Gavin Jones. Dr. Ganesh Prasad.</p>
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QUESTIONS AND ANSWERS.

STARRED QUESTIONS.

*1 to *6 **Dr. Ganesh Prasad** : [*Postponed at the request of Government till the meeting of the Council on August 7, 1926.*]

*7 to *9. **Pandit Nanak Chand** : [*Postponed at the request of Government till the meeting of the Council on August 7, 1926.*]

PATWARIS' HOUSES.

*10. **Pandit Nanak Chand** : (a) Is the Government aware that the district and sub-divisional officers very frequently insist upon the patwaris to build their own houses within their circles for their residence ?

(b) Do Government, in view of the recent policy regarding transfers of patwaris, intend to issue clear instructions to district officers not to insist upon the patwaris to construct their own houses for residence and that they may be allowed to reside in rented or borrowed houses ?

(c) Do Government intend to compensate patwaris on their transfer for having to abandon the houses built at their own cost for their residence within their circles ? If so, to what extent ?

(d) What arrangements do Government intend to make to provide houses for the residence of patwaris in case of their transfer to their new circles, where houses are not available to be rented or borrowed ?

Hon'ble Sir Sam O'Donnell : (a) No.

(b) No instructions are required, as district officers do not at present insist on patwaris building houses for themselves, but only on residence within their circles.

(c) No; patwaris can dispose of houses built by themselves.

(d) None; patwaris make their own arrangements.

TRANSFER OF PATWARIS IN BULANDSHAHR.

*11. **Pandit Nanak Chand** : Is it a fact that transfers of an unusually large number of patwaris is contemplated in Bulandshahr district with a view to evenly distribute the patwaris by their castes in the various parganas ?

Hon'ble Sir Sam O'Donnell : No; but certain transfers were recently made, as it was found that the patwaris of a certain group of villages were closely related.

ROADS TO HARDWAR.

*12. **Pandit Nanak Chand** : (a) Is the Government aware that there is no direct metalled road communication from Meerut and Muzaffarnagar districts to Hardwar ?

(b) Is it a fact, that there is metalled road of four miles from Roorkee to Pirankaliar on one of the banks of the Upper Ganges canal ?

(c) Is it a fact that the metalled road referred to in part (b) is freely used by public in general and the people attending the annual fair at Pirankaliar in particular ?

(d) Is it a fact that the distance from Pirankaliar to Hardwar is fourteen miles by the Upper Ganges canal ?

(e) Do Government intend to consider the advisability of metalling at an early date one of the banks of the Upper Ganges canal from Pirankaliar to Hardwar in continuation of Roorkee-Pirankaliar road on the bank of the canal and to open this road for direct communication from the districts of Meerut and Muzaffarnagar to Hardwar before the Kumbh fair ?

Hon'ble Sir Sam O'Donnell : (a) Yes.

(b) Yes.

(c) Yes.

(d) Yes.

(e) No such proposal is at present being considered by Government.

POSTING OF PROVINCIAL CIVIL SERVICE OFFICERS.

*13. **Pandit Nanak Chand :** (a) Is there any proportion fixed for the posting of Hindu and Muslim officers of the Provincial Civil Service for the individual districts in these provinces ?

(b) If so, what is the proportion for various districts ?

Hon'ble Sir Sam O'Donnell : (a) No.

(b) Does not arise.

MR. ACTON, I.C.S.

*14. **Pandit Nanak Chand :** (a) What amount per month will Mr. Acton, I.C.S., draw as his pay and allowances while he is on leave for over two years ?

(b) Is it a fact that Mr. Acton is in India at present ? If so, is he enjoying his leave, or doing some work on behalf of the Government of these provinces, or the Government of India or any other Government ?

(c) In case he is doing some work for any Government (i) what amount as pay and allowances, if any, he is receiving for the said work in addition to his pay and allowances referred to in part (a); (ii) do Government treat such services as of an officer on special duty or deputation ; (iii) was this deputation arranged through the Provincial Government ; (iv) under what rules, if any, is Mr. Acton eligible to receive remuneration for his services while he is on leave and is receiving his pay and allowances from this Government ?

Hon'ble Sir Sam. O'Donnell : (a) The leave is on the average pay drawn during twelve months previous to departure for eight months and on half average pay, calculated as above, for the remainder.

(b) Yes. Under the sanction of the Government of India he has been placed on leave and appointed to investigate a boundary dispute between Tehri and Tibet during the first three months thereof.

(c) (i) Rupees 225 per mensem.

(ii) No.

(iii) Yes ; except that he is not on deputation, but on leave.

(iv) The sanction of the Government of India has been obtained both to Mr. Acton's appointment and to the pay and allowances which he is drawing.

PUNITIVE POLICE.

* 15. **Pandit Nanak Chand**: With reference to the communication of the Chief Secretary, dated Naini Tal, June 15, 1926, to Commissioners and district magistrates, will the Government be pleased to state more clearly as to whether they intend to impose the burden of the cost of punitive police, where its appointment be found necessary, on the inhabitants of the locality affected indiscriminately or on the community which is found to be aggressive and responsible for the breach of the peace?

Hon'ble Sir Sam O'Donnell: Each case will be decided on its merits.

RELIGIOUS CELEBRATIONS.

* 16. **Pandit Nanak Chand**: (a) Has the attention of the Government been drawn to the judgement of their Lordships of the Privy Council in a case from Aurangabad, district Bulandshahr (Manzur Hasan *versus* Muhammad Zaman, 23, A. L. J., p. 179)?

(b) What steps, if any, do Government intend to take to ensure the peaceful celebration of the religious ceremonies in accordance with the adjudged rights of the Shias on the occasion of the next *Muharram*?

Hon'ble Sir Sam O'Donnell: (a) Yes.

(b) The declaration regarding rights is subject to the conditions set forth in the judgement. No special steps by Government are called for in existing circumstances.

COMMUNAL RIOT AT ATRAULI.

* 17. **Babu Jai Narayan Chaudhri**: Is it a fact that there had been a communal riot at Atrauli in the year 1916 and several Musalmans were convicted for having taken an aggressive part in it?

Hon'ble Sir Sam O'Donnell: Yes.

* 18. **Babu Jai Narayan Chaudhri**: Has the Government taken any precautionary steps to avoid a disturbance this year?

Hon'ble Sir Sam O'Donnell: Precautionary steps are taken wherever a disturbance is in any degree likely.

* 19. **Babu Jai Narayan Chaudhri**: Is it a fact that the following officials at Atrauli, among others, are Musalmans:—

- (a) the sub-divisional officer;
- (b) the tahsildar;
- (c) the officer-in-charge, police station;
- (d) the circle inspector;
- (e) the deputy superintendent of police;
- (f) the clerk-constable, police station;
- (g) the head constable?

Hon'ble Sir Sam O'Donnell: Yes; at the same time the naib-tahsildar, the second officer at the police station, the supervisor qanungo, the sub-assistant surgeon, and the postmaster are all Hindus as well as the chairman and secretary of the municipal board. The Atrauli police-station is under the direct charge of the superintendent of police, Mr. Fergusson.

TOWN HALLS.

***20. Pandit Nanak Chand:** (a) In what places do collectors, deputy collectors, or other executive officers have a hand in the control of the town halls, as recently decided in the case of Bulandshahr town hall?

(b) In what places do the district officers have to meet the maintenance charges of the town hall out of the contingencies fund placed by provincial Government at their disposal, as is proposed for Bulandshahr town hall?

(c) Do Government intend to consider the advisability of placing the Bulandshahr town hall under the control of a joint committee consisting of the representatives of the municipal and district boards, on condition that the boards undertake to maintain it in proper repair, and that the use of the hall is allowed for holding useful public meetings in accordance with the object of Raja Baqar Ali Khan of Pandrawal?

Hon'ble Nawab Muhammad Yusuf: (a) and (b) The information is not available and the Government do not propose to collect it, as it is not relevant to the case of the Bulandshahr town hall.

(c) The Government consider the suggestion as a possibility for the future. In the present circumstances they adhere to their decision indicated in the answer to starred question No. 20 for June 28, 1926 (copy enclosed).

[Answer to starred question No. 20 of June 28, 1926, referred to in answer to starred question No. 20(c) of July 27, 1926.]

***Hon'ble Nawab Muhammad Yusuf:** (a) The town hall was built out of public subscriptions for the general needs of the district, in particular, for the purpose of holding useful public meetings.

(b) The town hall was maintained as stated. Its control was taken over on August 15, 1925, by the district magistrate under his executive authority.

(c) No.

(d) and (e) The Government have resumed the property known as Moti Bagh including the town hall from the municipal board and have made over the management to the Collector. The control of the town hall for the purpose of meetings has been vested in a committee consisting of the Collector as president and the chairmen of the municipal and district boards, Bulandshahr.

DISTRICT HEALTH SCHEME.

***21. Pandit Nanak Chand:** (a) Will the Government be pleased to state in what districts the district health schemes have been introduced stating in each case the amount of contribution paid by the district boards and the Government respectively?

(b) Are there any district boards which do not contribute anything towards the cost of the scheme? If so, when does Government propose to extend the same concession to other districts which have introduced the health scheme?

Hon'ble Rai Rajeshwar Bali : (a) The districts in which the health scheme has been introduced and the amount of contribution paid in each case in the current year are as follows:—

District.			Contribution paid by district boards.	Contribution paid by Government.
				Rs.
Gorakhpur	...	...	One-third of the total cost of the scheme.	16,428
Basti	...	...		12,741
Moradabad	...	...		11,869
Bulandshahr	...	...		11,375
Azamgarh	...	...	One-sixth of the total cost of the scheme.	14,956
Fyzabad	...	...		16,623
Gonda	...	...		14,058
Bahraich	...	...		14,488
Sultanpur	...	...	Nil	15,404
Partabgarh	...	...		13,511
Bara Banki	...	...		15,046
Benares	...	...		9,528
Mirzapur	...	...		14,812
Ghazipur	...	...		14,706
Ballia	...	...		13,425
Allahabad	...	...		20,612

(b) Yes. The Government do not propose to extend the concession to other districts. The intention is that ultimately all districts should bear one-third of the total cost of the scheme.

*22. **Pandit Nanak Chand :** Do Government intend to place the small municipalities which have not got their own public health officers under the charge of district medical officers of health in districts where district health scheme has been introduced? If so, when?

Hon'ble Rai Rajeshwar Bali : The Government have already considered the matter and have decided that they will have no objection to the arrangement, provided that it is accepted by the municipal and district boards concerned.

***23. Pandit Nanak Chand:** Do Government intend to place Public Health department (Engineer branch) on a permanent basis? If so, from what date?

Hon'ble Nawab Muhammad Yusuf: (i) The honourable member is referred to the answer given on December 18, 1925, to starred question No. 73. So far funds have not been available.

(ii) The Government will consider the matter in connexion with the schedules of new expenditure proposed for 1927-28.

(Copy of starred question No. 73 asked on December 18, 1925, by DR. SHAFI'AT AHMAD KHAN and the reply given thereto.)

QUESTION.

Do the Government intend to make the posts of temporary engineers in the Public Health department permanent?

ANSWER.

There is a proposal to create an United Provinces Engineering Service, Public Health branch, and if funds permit the service will probably be created from April 1, 1926.

PROVINCIAL SERVICES.

***24. Pandit Nanak Chand:** Will the Government be pleased to state if it is open to the members of Provincial services to make representations to the Government of India, after their representations to the Local Government have not been favourably considered?

Hon'ble Sir Sam O'Donnell: The answer is in the negative.

PROVINCIAL JUDICIAL SERVICE.

***25. Pandit Nanak Chand:** Is it a fact that members of the Provincial Judicial Service have been making representations for about five years for revision of their remuneration? Does Government intend to forward the representation to the Government of India for their decision without further loss of time?

Hon'ble Sir Sam O'Donnell: The answer to the first part is in the affirmative.

The answer to the second part is in the negative.

The representation has been withheld under the rules.

***26. Pandit Nanak Chand:** (a) Is it a fact that the Government has decided to withhold the representations of the Provincial Judicial Service?

(b) If so, will the Government be pleased to reconsider its decision withholding the representation of the Provincial Judicial Service submitted on February 27, 1926, for transmission to the Government of India?

Hon'ble Sir Sam O'Donnell: (a) Yes.

(b) No.

***27. Pandit Nanak Chand:** (a) Has the Government decided to finally deal with the representation of the Provincial Judicial Service?

(b) If so, when are the Government likely to announce their decision?

Hon'ble Sir Sam O'Donnell: (a) The representation is not addressed to this Government.

(b) Does not arise.

*28. **Pandit Nanak Chand :** (a) Will the Government be pleased to state what scale of pay did the Secretary of State for India originally suggest for the Provincial Judicial Service, at the time when the revision of the scale of pay of services in India was under consideration ?

(b) Is it a fact that the scale suggested was higher than what prevails now ?

Hon'ble Sir Sam O'Donnell : (a) The scale now in force was framed on the lines sanctioned by the Secretary of State.

(b) No

RECOMMENDATIONS OF THE LEE COMMISSION.

*29. **Pandit Nanak Chand :** When and what steps, if any, has the Government taken so far or propose to take with a view to give effect to the Indianization recommendations of the Lee Commission with regard to the promotion of Indian officers belonging to the United Provinces Civil Service (Executive branch) to the superior services ?

Hon'ble Sir Sam O'Donnell : The honourable member is referred to the answer given to starred question No. 67 on June 29, 1926.

(Starred question No. 67 and the answer given to it on June 29, 1926, referred to in answer to starred question No. 29 for July 27, 1926.)

QUESTION.

Khan Bahadur Hafiz Hidayat Husain : How long do the Government expect to take to give full effect to the accepted recommendations of the Lee Commission that 20 per cent. of the superior posts should eventually be filled by recruitment from the Provincial service ?

Will the Government be pleased to state the steps and the stages by which this recommendation will be carried out ?

How long will it take to work up to the full percentage and what are the difficulties in the way of its being given effect to at an early date ?

What has been the extent of the start made ?

ANSWER.

Hon'ble Sir Sam O'Donnell : The programme accepted by the Secretary of State for India is that thirteen more posts should be listed in fifteen years, reckoning from April 1, 1924.

Notifications listing two more posts and making appointment to them are under issue.

HON'BLE MR. JUSTICE KANHAIYA LAL.

*30. **Pandit Nanak Chand :** Will the Government be pleased to state whether the Hon'ble Justice Rai Bahadur Pandit Kanhaiya Lal is shortly going to retire from the High Court of Allahabad ?

Hon'ble Sir Sam O'Donnell : The Hon'ble Judge reached the age of 60 years on July 17, 1926. All High Court Judges retire on reaching the age of 60.

AYURVEDIC AND UNANI COMMITTEE.

*31. **Pandit Nanak Chand :** Will the Government be pleased to publish the report of the Ayurvedic and Unani Committee appointed by the Government and presided over by the Hon'ble Mr. Justice Gokaran Nath Miara ?

Hon'ble Rai Rajeshwar Bali : Yes.

***32. Pandit Nanak Chand :** Will the Government be pleased to state the recommendations of the said committee regarding the location of the State-aided Ayurvedic and Unani colleges and schools, and the decision of the Government on the same?

Hon'ble Rai Rajeshwar Ball : A copy of the report is laid on the honourable member's table. Government have addressed the Benares and Aligarh Universities about the establishment of Ayurvedic and Unani colleges respectively in connexion with those universities. The Ayurvedic school will be at Hardwar and the Unani School at Lucknow.

TEXT-BOOKS FOR PRIMARY SCHOOLS.

***33. Pandit Nanak Chand :** (a) Will the Hon'ble Minister in charge of Education be pleased to state the policy with regard to the prescribing of alternative text-books for primary schools?

(b) What is the maximum number of alternative books fixed by the Government?

(c) Is the full number now prescribed?

Hon'ble Rai Rajeshwar Ball : (a) Government prescribe alternative text-books approved by the Text-book Committee.

(b) Five.

(c) Yes, in the case of readers in the common language and in the case of Hindi literary readers.

COMMON LANGUAGE READERS.

***34. Pandit Nanak Chand :** Has any standard been laid down with regard to the language of common language readers to be used in classes I, II, III and IV?

Hon'ble Rai Rajeshwar Ball : The honourable member is referred to paragraph 7, part III of resolution No. 1611/XV, dated August 25, 1914, which was printed in the *United Provinces Gazette*, dated August 29, 1914.

PROVINCIAL TEXT-BOOK COMMITTEE.

***35. Pandit Nanak Chand :** (a) Will the Hon'ble Minister be pleased to give a list of the members of the Provincial Text-book Committee?

(b) Will he be pleased to give the names of the members of the various sub-committees?

Hon'ble Rai Rajeshwar Ball : Lists are placed on the table of the honourable member.

(See Appendix A, page 910.)

WEAVING AND HOSIERY SCHOOLS.

***36. Khan Bahadur Hafiz Hidayat Husain :** How many weaving schools and hosiery schools under the Industries department are there in these provinces and at what places?

Hon'ble Thakur Rajendra Singh : A list is laid on the honourable member's table.

(See Appendix B, page 913.)

SUGAR AND VEGETABLE OIL FACTORIES.

*37. **Khan Bahadur Hafiz Hidayat Husain:** Have Government financed any sugar or vegetable oil factories so far? If so, which, and what is the amount advanced to each of such factories and the year or years in which the money was advanced?

Hon'ble Thakur Rajendra Singh: Yes: the following loans and grants were given to sugar and vegetable oil factories:—

Year.	Name of factory.	Amount.	Whether loan or grant
<i>Sugar.</i>		Rs.	
1922	The Karundia Industrial Development Company, Limited, Lucknow.	6,00,000	Loan.
1924	The Shri Maba Lakshmi Sugar Corporation, Limited, Lucknow.	1,20,000	Do.
<i>Oil.</i>			
1919	The Coronation Flour and Oil Mills, Allahabad ..	20,000	Loan.
1923	The Bindki Oil Mills, Bindki, district Fatehpur ..	1,100	Grant.
1925 & 1926.	The Lewis Engineering Works, Cawnpore ..	1,500	Do.

AGRICULTURAL MODEL FARMS.

*38. **Khan Bahadur Hafiz Hidayat Husain:** Do Government contemplate establishing agricultural model farms in each district?

Hon'ble Thakur Rajendra Singh: Government contemplate extensions as funds permit.

*39. **Khan Bahadur Hafiz Hidayat Husain:** In which district do such model farms exist now?

Hon'ble Thakur Rajendra Singh: A classified list of all agricultural farms is laid on the honourable member's table.

(See Appendix C, page 914.)

PRISON FARMS.

*40. **Khan Bahadur Hafiz Hidayat Husain:** Do Government contemplate starting prison farms to give prisoners lessons in agriculture?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: No.

VEGETABLE OILS.

*41. **Khan Bahadur Hafiz Hidayat Husain:** Do Government contemplate examining the question of refining vegetable oils?

Hon'ble Thakur Rajendra Singh: Experiments in oil-refining are already being conducted at the Technological Institute, Cawnpore.

ECONOMIC BOTANIST FOR MODEL FARMS.

*42. **Khan Bahadur Hafiz Hidayat Husain:** Do Government contemplate the appointment of an Economic Botanist attached to model farms?

Hon'ble Thakur Rajendra Singh : Government have already two Economic Botanists whose services are available for the examination of botanical problems arising at Government farms.

GOVERNMENT LOANS.

***43. Khan Bahadur Hafiz Hidayat Husain :** Do Government contemplate raising another loan in the market? If so, for what purpose? When will the loan be raised? What are the terms, duration, and rate of interest at which it would be raised?

Hon'ble Sir Sam O'Donnell : The answer to the first part of the question is in the negative. The rest of the question does not arise.

SEPARATION OF REGISTRATION OF JOINT STOCK COMPANIES FROM REGISTRAR OF CO-OPERATIVE SOCIETIES.

***44. Khan Bahadur Hafiz Hidayat Husain :** Do Government contemplate relieving the Registrar of Co-operative Societies from registration of joint stock companies work? If so, when?

Hon'ble Thakur Rajendra Singh : Government are considering the question.

ARREST OF CERTAIN PERSONS IN JHANSI.

***45. Khan Bahadur Hafiz Hidayat Husain :** What are the circumstances under which nine Hindu and nine Muslim residents of Jhansi were arrested and put in custody by the District Magistrate, Mr. Darling, on June 21, 1926? Under what law were they arrested?

Hon'ble Sir Sam O'Donnell : As the result of a written report received from the superintendent of police, notices under section 112, Criminal Procedure Code, were issued against nine Hindu and nine Muslim residents of Garhia Phatak. Only two of these persons are natives of the Jhansi district. At the same time warrants of arrest were issued under the proviso to section 114, Criminal Procedure Code. An order requiring security was passed under section 118, Criminal Procedure Code, on the same day against the nine Hindus and the eight Muslims on whom the warrants of arrest had been executed.

***46. Khan Bahadur Hafiz Hidayat Husain :** Is it a fact that the Hindus were released on the same date? If so, at what time were they released?

Hon'ble Sir Sam O'Donnell : Yes, soon after 8 p.m., on furnishing adequate security.

***47. Khan Bahadur Hafiz Hidayat Husain :** Did the Muslims of Jhansi call on Mr. Darling on the night of the same date and apply to him to release the Muslims on bail? Did the district magistrate refuse to do so and, if so, why?

Hon'ble Sir Sam O'Donnell : The security offered by the Muslims up to 8.45 p.m. when the protracted proceedings in court terminated for the day was not adequate. The district magistrate declined to reopen the matter at his bungalow at 9 p.m. when approached by five or six persons. He had given ample opportunities in court for producing sureties.

*48. **Khan Bahadur Hafiz Hidayat Hussain**: Were the Muslims kept in the lock-up on June 22, 1926 (the *Bakr-Id* day), and a greater portion of June 23 also? What time of the day were they released on June 23?

Hon'ble Sir Sam O'Donnell: Yes. They were released about 1 p.m. on June 23.

AYURVEDIC AND UNANI COMMITTEE.

*49. **Pandit Brijnandan Prasad Misra**: (a) Will the Government inform the Council if and when they propose to publish the report of the Ayurvedic and Unani Committee?

(b) What action has been taken on the aforesaid committee's recommendations, and if no action has so far been taken, what is the reason for delay and when is action proposed to be taken?

Hon'ble Rai Rajeshwar Bali: (a) Yes, shortly.

(b) In addition to the action mentioned in starred question No. 32 of today's date, the Government have decided, subject to the vote of the Council, to establish a Board of Indian Medicine.

DEPREDACTIONS BY WOLVES IN PILIBHIT AND BAREILLY DURING 1926.

*50. **Pandit Brijnandan Prasad Misra**: Will the Government inform the Council of the number of persons reported to have been taken away by wolves in the districts of Pilibhit and Bareilly, stating the names of the thanas infested with these animals and the steps taken by Government officials in those localities to prevent mischief?

Hon'ble Sir Sam O'Donnell: Figures for 1926 are laid on the table. In Pilibhit an armed guard has been sent to the affected area and the usual reward increased to Rs. 20. In Bareilly the usual reward has been doubled; *Singhiwalas* have been employed; a sub-inspector was placed on special duty for a month and four armed police for a fortnight; beats have been organized.

(See Appendix D, page 915.)

*51. } **Pandit Brijnandan Prasad Misra**: [*Postponed at the request*
 *52. } *of Government till the meeting of the Council on August*
 7, 1926.]

REMISSION OF REVENUE IN BUDAUN.

*53. **Mr. Muhammad Ismail Ali Khan**: Will the Government be pleased to furnish the following information:—

(a) the total number of *tagavi* that was distributed in Budaun district in 1924-25;

(b) the total sum of revenue remitted in 1924-25;

(c) the total sum of revenue suspended in 1924-25;

(d) the total sum distributed to the poor freely in 1924-25?

Hon'ble Sir Sam O'Donnell: (a) The total amount of *tagavi* distributed during the revenue year 1924-25 was Rs. 4,92,272, i.e., Rs. 4,91,447 under Act XII and Rs. 825 under Act XIX.

(b) The total sum of revenue remitted in the revenue year 1924-25 was Rs. 1,55,884-8.

(c) The total sum of revenue suspended in the year 1924-25 was Rs. 110.

(d) The total sum distributed freely to the poor during 1924-25 was Rs. 1,10,895.

GANGES bandh.

* 54. **Mr. Muhammad Ismail Ali Khan:** Will the Government be pleased to state the total sum that was spent over the Ganges *bandh* (Collector's *bandh*) last year or the year before last by the Government?

Hon'ble Sir Sam O'Donnell: About Rs. 20,000.

* 55. **Mr. Muhammad Ismail Ali Khan:** Will the Government be pleased to state the reason why the *bandh* constructed so recently has been ordered to be demolished?

Hon'ble Sir Sam O'Donnell: No orders have been issued for the demolition of the *bandh*. The Narora weir which forms the head-works of the Lower Ganges canal was constructed on the assumption that in high flood a large volume of water would spill over the left bank of the Ganges above the weir into the Mahewa and Bardmar rivers and return to the Ganges below the weir. The *bandh* constructed last year obstructed this natural outlet, with the result that last monsoon a greater discharge over the weir was recorded for a considerable period with a moderate river than had been recorded previously in the highest floods for a few days. The weir is thus seriously endangered and a disaster of the first magnitude threatened. Government have therefore ordered the lowering of the *bandh* to an extent necessary to ensure the safety of the Narora weir and no more.

* 56. **Mr. Muhammad Ismail Ali Khan:** Will the Government be pleased to state the damage caused to the Canal department since the construction of this *bandh*?

Hon'ble Sir Sam O'Donnell: The actual cost of special repairs to the Narora weir last year, necessitated by the abnormal strain put upon it by the existence of the *bandh*, was Rs. 25,000. The potential damage, if the weir were destroyed, would be about a crore of rupees in the cost of re-building the weir and the loss of canal dues and revenue, and there would also be serious loss of human life, cattle, and property.

* 57. **Mr. Muhammad Ismail Ali Khan:** Does the Government know that about 10,000 men gathered on the spot to protest when some officers went to have the *bandh* demolished and a great sensation prevailed?

Hon'ble Sir Sam O'Donnell: Government are aware that there is strong local opposition in the villages behind the *bandh* to the order to lower it.

* 58. **Mr. Muhammad Ismail Ali Khan:** Will the Government be pleased to state what action it proposes to take to save Gunnaur and Sahaswan tahsils from the recurring calamity?

Hon'ble Sir Sam O'Donnell: When the *bandh* has been lowered to the necessary level, the villages behind it will be in a better position than they were before the *bandh* was constructed. These *khadir* villages must always by their situation be exposed to damage

by high floods, and this fact is taken into account in assessing the revenue and in granting remissions of revenue and giving other forms of relief, when circumstances demand. But small local interests cannot be allowed to weigh against the extensive and important interests involved in the safety of the Lower Ganges canal.

UNSTARRED QUESTIONS.

1. **Pandit Nanak Chand :** [*Postponed at the request of Government till the meeting of the Council on August 7, 1926.*]

PRIVATE CANDIDATES FOR HIGH SCHOOL AND INTERMEDIATE EXAMINATIONS.

2. **Pandit Nanak Chand :** (a) What is the number of private candidates for High School and Intermediate examinations who appeared at the examinations held by the Benares and Aligarh Universities and Board of High School and Intermediate Education for the years 1923-24, 1924-25, 1925-26 respectively.

(b) What is the percentage of successful candidates referred to in part (a) in each examination of the various examining bodies referred to therein ?

Kunwar Jagdish Prasad : A statement is laid on the table.

(See Appendix E, page 916.)

3. **Pandit Nanak Chand :** [*Postponed at the request of Government till the meeting of the Council on August 7, 1926.*]

INSPECTRESSES OF GIRLS' SCHOOLS.

4. **Pandit Nanak Chand :** (a) Will the Government be pleased to state if it is a fact that inspectresses of girls' schools are either third or second class officers and all are allowed to draw travelling allowance at the rate prescribed for first class officers ?

(b) Do Government intend to consider the advisability of reducing this travelling allowance to that prescribed for second class officers, unless any of them happens to be a first class officer ?

Kunwar Jagdish Prasad : (a) Under rule 16 I (f) of the Financial Handbook, volume III (Travelling Allowance Rules), inspectresses of girls' schools are first class officers for the purpose of travelling allowance.

(b) Does not arise.

5. **Pandit Nanak Chand :** (a) What is the number of Hindu, Muhammadan, Indian Christian, and Anglo-Indian inspectresses of schools in these provinces ?

(b) What steps, if any, do Government propose to take to recruit inspectresses from classes which are hitherto unrepresented or inadequately represented ?

Kunwar Jagdish Prasad : (a) Hindu—none ; Muhammadan—none ; Indian Christians—two ; Anglo-Indians—five.

(b) The claims of qualified candidates will be considered when and if they apply for appointment.

6. **Pandit Nanak Chand :** (a) What is the number and percentage of the girls' schools inspected by the various inspectresses of schools in the various circles for the years 1923-24, 1924-25, 1925-26 ?

(b) What agency inspected the remaining schools during the said years ?

Kunwar Jagdish Prasad : (a) A statement is placed on the table of the honourable member.

(c) The district inspecting staff.

(See Appendix F, page 917.)

7. **Pandit Nanak Chand :** At how many and what places do inspectresses occupy office buildings as their residences and what rent are they paying in each case ?

Kunwar Jagdish Prasad : A statement is placed on the honourable member's table.

(See Appendix G, page 918.)

8. **Pandit Nanak Chand :** What is the total expenditure for the following heads under female education :—

(1) pay and allowances of the inspectresses of girls' schools ;

(2) rent of office buildings ;

(3) charges on clerical establishments and contingencies ?

Kunwar Jagdish Prasad : (1) Rupees 41,220.

(2) Rupees 4,146.

(3) Rupees 18,119.

GRANT FOR MAKHTABS AND PATHSHALAS.

9. **Pandit Nanak Chand :** (a) What is the amount of Government grant for *maktabs* and *pathshalas* respectively ?

(b) What amount is spent on Islamia schools and Hindu *pathshalas* as district board institutions in each district in these provinces ?

Kunwar Jagdish Prasad : (a) Government do not give district boards separate grants for expenditure on *maktabs* and *pathshalas*, but lump grants for expenditure on education as a whole, which the boards are free to apportion to the various sub-heads of vernacular education for which Government have fixed minimum figures of expenditure.

(b) Information is not available ; it would be necessary to address all district boards in order to obtain it. Hindu *pathshalas* are not maintained by district boards ; they are only aided by the boards.

PROMOTION OF TAHSILDARS TO DEPUTY COLLECTORSHIPS.

10. **Pandit Nanak Chand :** How many Hindu, Muslim and Christian tahsildars have been promoted to the rank of deputy collectors during 1921, 1922, 1923, 1924, 1925, and 1926, respectively ?

Mr. H. A. Lane : A statement is laid on the table.

(See Appendix H, page 919.)

11. **Pandit Nanak Chand :** [Postponed at the request of Government till the meeting of the Council on August 7, 1926.]

DEPUTATION OF MAULVIS AND PANDITS TO TRAINING COLLEGES.

12. **Pandit Nanak Ohand:** (a) Has the attention of the Government been drawn to a resolution passed by the non-gazetted education officers at Muzaffarnagar suggesting the revival of the deputation of *maulvis* and *pandits* possessing sufficient knowledge of English to training colleges?

(b) What has the Government decided on this question?

Kunwar Jagdish Prasad: (a) Yes.

(b) Government have not accepted the suggestion.

SARBARAHKARS IN JAUNPUR.

13. **Maulvi Muhemmad Obaid-ur-Rahman Khan:** Will the Government be pleased to furnish—

(a) a list of the candidates for sarbarahkarship maintained in the Jaunpur district for 1922 to 1924;

(b) the status, qualifications, and departmental experience of each;

(c) the period for which each was put on the practical work to show his capability;

(d) the reasons for which they were not provided by the Board along with other reduced sarbarahkars, and whether there is any likelihood of their being posted in the near future?

Mr. H. A. Lane: (a) No list of candidates for sarbarahkarship is maintained either in the Board's office or in districts.

(b) and (c) Do not arise.

(d) The Board tries to provide for only those sarbarahkars who are thrown out of employment for no fault of their own owing to retrenchment or release of estates. Candidates for new appointment are not on a par with them.

14. **Maulvi Muhammad Obaid-ur-Rahman Khan:** Will the Government be pleased to furnish—

(a) a copy of the correspondence that passed between the Collector of Jaunpur and the Commissioner in connexion with the appointment of Munshi Israr Hasan, honorary sarbarahkar, in April, 1924;

(b) the reasons of his appointment in preference to other candidates;

(c) the orders passed by the Commissioner;

(d) the grounds on which the Board replaced him by a reduced person;

(e) the measures which were taken for his provision elsewhere;

(f) the nature of his work as an honorary sarbarahkar as well as of his substantive post, if any, of the department?

Mr. H. A. Lane: (a), (b) and (c) Government are not prepared to furnish the correspondence between the Collector of Jaunpur and the Commissioner on the subject.

(d) Munshi Israr Hasan was asked by the Collector to take over charge from Munshi Shabbir Hasan, who had submitted his resignation

before the resignation was accepted by the Board. His appointment was not therefore in order. The Board, when they accepted Munshi Shabbir Hasan's resignation, appointed another man, as in their opinion he had a better claim to a vacancy than Munshi Israr Hasan.

(e) No measures were taken for providing Munshi Israr Hasan with an appointment elsewhere, as he was neither a reduced sarbarahkar nor a paid employee of the court of wards. He was only allowed to learn work in Jaunpur at his own request in an honorary capacity.

(f) No specific duties were assigned to him as an honorary sarbarahkar. The assistant manager made over to him work which he thought would be useful for his training. Munshi Israr Hasan held no substantive post in the court of wards.

BASHARATPUR ESTATE, JAUNPUR.

15. **Maulvi Muhammad Obaid-ur-Rahman Khan** : Will the Government be pleased to furnish a copy of the annual administration report of the Basharatpur estate under the court of wards in the Jaunpur district for 1923 and 1924, along with the review of the Commissioner.

Mr. H. A. Lane : The Government are prepared to answer questions of public interest on the administration of estates managed by the court of wards but not to supply copies of annual reports and reviews of them.

CURRICULA OF FOREST COLLEGE, DEHRA DUN.

16. **Maulvi Muhammad Obaid-ur-Rahman Khan** : Will the Government be pleased to state the difference in the curricula of the education imparted to these Provincial Service men in the Forest department and that to be imparted in the proposed All-India Institute at Dehra Dun ?

Mr. H. A. Lane : No information as to the curriculum of the Indian Forest Service course to be instituted at the Forest Research Institute on November 1, 1926, is available, as the institute is under the Government of India.

AYURVEDIC AND UNANI COMMITTEE.

17. **Rai Bahadur Thakur Mashal Singh** : Will the Government be pleased to state when the report of the Ayurvedic and Unani Committee was submitted to the Government by the committee ?

Sir Ivo Elliott : Towards the end of February, 1926.

18. **Rai Bahadur Thakur Mashal Singh** : Will the Government kindly state definite reasons why it has not been published till now and why no action is being taken in accordance with the recommendations of the committee ?

Sir Ivo Elliott : The report required full examination. It is now in press and is about to be published. Action has been taken on the recommendations.

IRREGULARITY IN VOTING.

Hon'ble the President : In one of the divisions here yesterday an honourable member voted both on the Ayes side and the Noes side. It does not alter the decision of the Council, because the voting on one side was 39 and the voting on the other side was 29. I have ascertained

from the honourable member that he wanted to be neutral, and that as he had given his vote on one side he wanted to 'neutralize it by giving a vote on the other side as well. This mistake was discovered by the Secretary and he has pointed it out to me. This ought to have been brought at once to my notice by the honourable member concerned so that we might have avoided reference in open Council. The records will be corrected accordingly.

THE AGRA TENANCY BILL.

CLAUSES 221 TO 229.

Question, that clauses 221, 222, 223, 224, 225, 226, 227, 228 and 229 stand part of the Bill, put and agreed to.

NEW CLAUSE.

Rai Sahib Lala Jagdish Prasad : I beg to move that the following clause be inserted after clause 229 as clause 229A :—

"Revenue or profits not paid on the day on which they fall due become, on the following day, arrears, and the lambardar or co-sharer or muafidar or assignee of revenue or taluqdar or superior proprietor, as the case may be, entitled to realize such dues, shall be entitled to claim interest on such arrears at one per cent. per mensem."

In clause 131 zamindars have been given the right to realize interest from tenants in respect of arrears of rent at the rate of one per cent. per mensem. Similarly, I think that a lambardar or co-sharer or muafidar or assignee of revenue or taluqdar or superior proprietor should be entitled to claim interest on arrears of revenue or profits at one per cent. per mensem.

Hon'ble Sir Sam O'Donnell : At present there is no statutory provision in the 1901 Act for interest in the case of arrears, but it has been the practice of the courts to award such interest, and I think the matter is one which should continue to be left to the discretion of the courts. There is no reason to suppose that the courts will not award interest in cases in which it ought to be awarded, and should this not be the case, there is always the right of appeal.

Maulvi Muhammad Obaid-ur-Rahman Khan : Now that we are revising the Tenancy Act, it seems to me very necessary that a provision like the one moved by the honourable member for Muzaffarnagar should be incorporated, and I hope the Hon'ble the Finance Member will reconsider his opinion in the matter. It is essential to legalize the practice of the courts in the matter of awarding interest in suits for arrears of rent.

Dr. Zia-ud-din Ahmad : I support the motion. In order to pay land revenue to the Government the zamindars have very often to borrow money at a heavy rate of interest. It is therefore desirable that facilities should be afforded to them in the matter of the collection of money from the tenants, and interest should be allowed to them for arrears of revenue or profits, especially when such is the existing practice as pointed out by the Hon'ble the Finance Member.

Babu Nemi Saran : I rise to support the motion. If the reason underlying the request is the practice which is invariably followed by the courts, I see no reason why the clause should not be brought on the statute-book.

Rai Sahib Lala Jagdish Prasad: I suppose that the reasonableness of my amendment is admitted on all hands. I think it is not proper to leave the matter to the discretion of the court. The courts might allow interest or might not in the absence of any such provision in the Act. When it is considered that interest on arrears of revenue and profits ought to be allowed, I think the Council should accept my amendment. With these words I press my amendment.

Hon'ble Sir Sam O'Donnell: I have no strong objection to this proposal. The existing provision under which the court has discretion seems to me in principle to be preferable. But it is really a matter which affects the landlords and therefore I shall not vote against it.

Question that the following new clause be added put and agreed to:—

"Revenue or profits not paid on the day on which they fall due become on the following day arrears, and the landlords or co-sharer or muafidar or assignee on revenue or taluqdar or superior proprietor, as the case may be, entitled to realize such dues, shall be entitled to claim interest on such arrears at one per cent. per mensem."

Hon'ble the President: I am afraid that in the discussion of Chapters XV and XVI there is going to be a duel of wits between the lawyer members of the Council. The suggestion is that we might take up Schedule IV first, because there are constant references to it in the clauses under Chapter XV. Is that agreed to?

There being no objection, the Council proceeded to discuss schedule IV:—

THE FOURTH SCHEDULE.

[The jurisdiction both original and appellate specified in the heading of each group is in all cases subject to the provisions of sections 241, 271 and 273.]

GROUP A—SUITS.

[Suits triable, in the case of serial Nos. 1 and 2, whatever the value, by assistant collector of the first class, and in the case of other serials when not exceeding Rs. 200 in value by assistant collector of the second class, when exceeding Rs. 200 in value by assistant collector of the first class—appeal to Collector.]

Serial no.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	48	For compensation for rent or produce exacted in excess of rent lawfully payable.	One month	The date of the exaction.	As in the Court Fees Act, 1870.
2	85	For an injunction, or for the repair of damage or waste, or for compensation.	One year..	When the damage is done or the waste begins, or the condition is broken,	Ditto.

Serial No.	Section of Act.	Description of suit	Period of limitation.	Time from which period begins to run.	Proper court fees.
3	132 or 81	For arrears of rent, or where rent is paid in kind for the money equivalent of such rent, including suits by an assignee and suits for arrears due to a person who has ceased to be a landholder.	Three years	When the arrears became due.	As in the Court Fees Act, 1870.
4	142	For compensation for refusing to deliver receipt for rent paid or to credit the rent paid as requested by the tenant.	Three months.	The date of the refusal.	Ditto.
5	175	To contest a distraint..	As in section 175.	As in section 175 ..	Ditto.
6	178	To recover compensation for distraint and sale of property.	Two months	The date on which the sale takes place.	Ditto.
7	179	For compensation for wrongful acts of distrainer.	Ditto ..	The date on which the right to sue accrues	Ditto.
8	180(2)	For recovery of the amount realized from a sub-tenant by proceedings in distraint	Ditto ..	The date of realization.	Ditto.
9	221	By a lambardar to recover from a co-sharer arrears of revenue, village expenses and other dues.	Three years	When the arrears became due.	Ditto.
10	222	By a co-sharer to recover from a co-sharer who defaults arrears of revenue paid by the plaintiff on account of the defendant.	Ditto ..	When the arrears were paid.	Ditto.
11	223	By a muafidar or assignee of revenue for arrears of revenue due to him as such.	Ditto ..	When the arrears became due.	Ditto.
12	224	By a taluqdar or other superior proprietors for arrears of revenue or rent due to him as such.	Ditto ..	Ditto ..	Ditto.
13	226	By a co-sharer against a lambardar for his share of the profits of a mahal, or of any part thereof.	Ditto ..	Ditto ..	Ditto.
14	227	By a co-sharer against a co-sharer for a settlement of accounts and his share of the profits of the mahal, or of any part thereof.	Ditto ..	Ditto ..	Ditto.

THE FOURTH SCHEDULE: GROUP A—SUITS.

Pandit Nanak Chand : I move that in line 1 of the heading after "1 and 2" be added "13 and 14." Suits under serial Nos. 13 and 14, namely, suits by a co-sharer against a lambardar for his share of the profits of a mahal or of any part thereof, and suits by a co-sharer against a co-sharer for a settlement of accounts and his share of the profits of the mahal or of any part thereof, are very important; they often involve intricate question of law and proprietary rights and they should be heard by an assistant collector of the first class instead of by a tahsildar in the first instance, and the appeals should lie to the district judge, but this can be discussed later on. With this object in view I move this amendment.

Mr. R. Burn : This is a slight change which has been made in the existing law providing that suits by a co-sharer against a lambardar or for the settlement of account may be tried by a tahsildar, not necessarily by an assistant collector of the first class. If honourable members will refer to the existing fourth schedule (Group A) they will find that tahsildars already have jurisdiction up to the ordinary limit of value to try suits by a lambardar against a co-sharer for arrears of revenue, or by a co-sharer against a co-sharer who defaults for arrears of revenue which have been paid by the plaintiff.

I think honourable members will agree that the standard of intelligence and ability of tahsildars has increased and tahsildars already deal with certain classes of profits suits. The suits are only up to the limit of value which is imposed by the Act, and there is an additional safeguard of a third appeal in these cases in certain contingencies. If there is any dispute about proprietary rights when the collector has decided an appeal against the order of the tahsildar, there is another appeal to the district judge. These safeguards seem ample.

Babu Nemi Saran : With your permission I beg to move an amendment to the amendment of Pandit Nanak Chand that serial Nos. 13 and 14 be omitted from the schedule. My purpose for moving this amendment is that I want to take out these two classes of suits altogether out of the jurisdiction of revenue courts. The nature of suits concerned in the serial No. 14 is regarding the settlement of accounts by a co-sharer against a co-sharer and his share of the profits of the mahal, or of any part thereof; and No. 13, by a co-sharer against a lambardar for his share of the profits of a mahal, or of any part thereof. These two sorts of suits are such which require a great deal of the working out of profits and of accounts. We know that the revenue courts are not very expert in dealing with cases of this sort. Honourable members here will bear me out that in cases like this the revenue court find themselves in very great difficulty. Firstly, because generally revenue courts do not give so much time to revenue work as to criminal work, as both these are done by one person, and the general practice in the revenue courts in the mufassil is that the revenue work is done by the ahlmad. The evidence is taken by the ahlmad and the whole record is put before the magistrate when it is complete and he gives orders thereon. The cases in these two serial numbers are of a very serious nature and involve a great risk to parties concerned. We all know that in the Bill as introduced by the Government these two sorts of

[Babu Nemi Saran.]

cases were not included within the jurisdiction of revenue courts. We also know that the Fremantle Committee which drafted this Bill in the first instance also favoured the idea that these two sorts of cases should not fall within the jurisdiction of revenue courts. I can say that all those gentlemen who may be practising in the mufassil courts must be knowing very well that if they allow these two sort of cases to go into the revenue courts they would be depriving the parties concerned, who are always the zamindars, of the best forum which they can get under my amendment. The experience and legal ability of the revenue courts is certainly inferior to those of civil courts in matters like this, and I hope in this Mr. Herchenroder will bear me out. We all know that appeals in these cases used to go to district judges, and I think it is but fair that in the first instance they should also go to the civil court. I do not want to press my point further by argument, but the utmost that I can do is that I appeal to the Government, especially to the zamindar members, whose interest is concerned, that they should look to their interest and obtain the best forum which they can have regarding these two kinds of suits.

Rai Bahadur Pandit Kharagjit Misra: I support Pandit Nanak Chand's amendment to the extent that serial Nos. 13 and 14 should not stand in the place in the fourth schedule which they occupy at present, but I oppose his amendment so far as it relates to the fact that they should occupy a place after the serial Nos. 1 and 2. I support Mr. Nemi Saran Jaini's amendment to the full extent to which he has advocated the case before the Council. It is not a new idea with us; the provision that the profits cases should be tried in civil courts found a place in clause 230 of the Bill as originally drafted in 1924 (suits under sections 221, 222, 226 and 227 shall be heard and determined by the civil courts). The provisions of this draft Bill were before the public for a long time. They were considered by the press; they were considered by the general public; they were considered by the tenants and by the zamindars, and yet an objection to this provision was not taken either by the tenants or by the zamindars or anybody. This shows that there is a large consensus of opinion in the country inclined to the view that these suits should be heard rather by the civil courts than by the rent courts, and there are reasons for this. The reasons are that in the rent court what takes place in the shape of a proceeding is hardly what can be called a trial. It may aptly be called a travesty of a trial. Usually the patwari is called; he prepares a statement of accounts, and on the back of that statement is recorded his deposition, the only evidence in the case, in a solitary word "verified." The fate of parties in hundreds and thousands of cases of this kind is decided on that statement of accounts. Then sometimes these cases are defended on the ground of the denial of the proprietary title of the plaintiff. There are important questions of adverse possession and defendant's title ripening into ownership by prescription and possession for a long period. These, it must be fairly conceded, are not questions properly to be tried by the rent court: they must be tried by the civil court. Then the assistant collector who now hears these suits sometimes sits miles away from the place where the parties live, and neither the plaintiff nor the defendant nor their witnesses relish the

idea of undertaking a long journey ; but the civil court sits at one place and they always want to go to that place where important cases can be speedily disposed of.

Therefore our point is that these cases must be decided by the civil court and not by the revenue court. This idea, as I submitted before, found favour with the framers of the draft Bill, and I hope the Council will also come to a similar decision now. In the select committee this view found favour with three members, all of whom are graduates in law and have experience of courts.

Khan Bahadur Mr. Muhammad Ismail: I am afraid it will not serve a very useful purpose if suits of this nature were to be tried by the civil courts. Although I have great respect for civil court judges, I am afraid they are not expert in the trial of revenue cases. Apart from that, our object should be in all cases between landlords and tenants, that they should cost as little as possible and that they should be disposed of speedily. Now these objects, I am afraid, will not be served if the cases are heard by the civil courts. The learned gentlemen practising in the civil courts I am afraid will charge not according to the value of the suit but according to their own merits, and the civil court with its usual standard will expect much better evidence and judge it much more critically than a revenue court would. This test, I am afraid, will be found very hard in a large number of cases where a zamindar has to bring a suit under this clause. All he wants is to give *prima facie* evidence that the money has not been paid to him ; this will be proved by the patwari, and everything would be decided in a simple manner and with very little expense. Therefore, although there is no doubt that civil court judges as a rule are much more efficient and much better trained lawyers, and the practitioners in the civil courts are also of superior calibre, it is not necessary to bring forward such an expert and complicated machinery to decide simple suits. Therefore I am afraid if the amendment of the honourable member is allowed, it will not help the plaintiff nor do I think it will help the defendant.

There is one thing more to say before I sit down. It must be within the experience of a number of honourable members present here that it is an extremely difficult thing to get hold of a patwari in a court. He has got a knack of wriggling out of appearance in court. He is always to be found elsewhere, and if the civil court follows the provisions of the Civil Procedure Code that no suit should be adjourned without sufficient cause—and the absence of witnesses is not always a sufficient cause—you will find that the patwari will not be found in a number of cases. He may be personally helping the qanungo or the Deputy Sahib or somebody else, and the suit of the plaintiff very likely will be dismissed. On the other hand, the tahsildar and assistant collector have got ways of controlling patwaris. The patwari, if he is afraid of anybody, is afraid of the tahsildar and of the assistant collector. They will probably stop his pay ; that is one of the ways adopted for ensuring attendance of a patwari. On pay day when he comes for his pay he finds that he will not get it unless he attends certain cases which have been postponed a number of times because of the absence of the patwari. Therefore, having regard to all the circumstances, I think it would be much simpler if we have these cases tried by the revenue courts than by the civil courts.

Hon'ble Sir Sam O'Donnell : I agree entirely with what has fallen from Khan Bahadur Mr. Muhammad Ismail. It seems very desirable that these cases should be tried properly and without undue delay and undue expense. After all, the issues which come before the courts in cases of this kind are not complicated issues and not difficult issues. They are simple questions of fact, and the revenue courts are, I think, in a better position to deal with such questions. The revenue courts are more familiar with rural economy than the civil courts are. Of course if any question of proprietary title arises that will be decided by the civil court. But, for example, in a suit by a lambardar the ordinary question would be whether the lambardar has realized the full rental demand and how much he has collected himself. These are quite simple matters which the revenue court can decide. Therefore I must oppose the amendment of Babu Nemi Saran.

Rai Bahadur Thakur Hanuman Singh : The honourable mover and his supporter have advanced arguments.

Hon'ble the President : There are two amendments before the House. On which amendment is the honourable member speaking ?

Rai Bahadur Thakur Hanuman Singh : I am speaking on Mr. Nemi Saran's amendment.

The arguments which have been advanced in favour of the amendment moved by Mr. Nemi Saran are such which cannot convince one who knows how the work is carried on by the revenue courts. What has been said in support of the amendment is very much to the discredit of the revenue courts, which they do not deserve, and the arguments, I may be permitted to say, are nothing but imaginary. There is no complaint against the decisions of the revenue court of rent suits. Mr. Nemi Saran has gone so far as to say that the evidence is recorded by ahlmads and it is signed by the presiding officer of the court, and on that evidence the officer records his judgement. The least which can be said of this statement is that it is incorrect. All the revenue officers presiding in revenue courts record evidence with their own hands and write judgements just in the same way as the officers of the civil court do. These cases are decided by the revenue courts much more expeditiously and at less cost than, as is proposed, they would be decided by the civil court. Even in petty cases the civil courts take years and years to decide, while the revenue courts dispose of such cases in about 4 or 5 months' time. It will be putting zamindars and tenants to difficulty and to extra expenditure if it is decided that such cases should be decided by the civil court. With these few remarks I oppose the amendment which has been moved by Mr. Nemi Saran.

Rao Sahib Abdul Hameed Khan :

جناب والا —

میں نے آنریبل ممبر (Mover) جناب بابو نیمہی سرن صاحب کی تقریر کا بہت کافی حصہ نہیں سنا لیکن میں اس مسئلہ پر غور کرنے کے بعد جس نتیجہ پر پہنچا ہوں وہ عرض کرنے کی جرات کرتا ہوں *

نمبردار اور حصہداروں کے معمولی نقص اور جھگڑے اب تک جیسے ریونیو کورٹس (Revenue Courts) میں طے ہوتے رہے ہیں اُس کا ہمیں کافی تجربہ ہی آج اگر یہہ ترمیم منظور کر لی جائے تو اُس کا نتیجہ یہہ ہوگا کہ آئندہ سے اُس قسم کے جھگڑے خواہ نمبرداروں کے ہوں یا آپس کے حصہداروں کے ہوں وہ سول کورٹس یا دیوانی کی عدالت میں پیش ہوا کریں گے۔ میں اُس سے رائف ہوں کہ لوگوں کو ریونیو کورٹس میں مقدمات دیے سے فیصلہ ہونے کی شکایت ضرور ہی اور جبکہ یہہ معاملہ ہماری کونسل میں پچھلی مرتبہ بجٹ کے وقت لایا گیا تھا تو گورنمنٹ کی طرف سے جو تقریریں ہوئی تھیں اُن سے یہہ ظاہر ہوتا تھا کہ غنیمت شاید اِس صورت حال کی اصلاح ہو جائے اور میرا بھی یہی خیال ہی کہ یہہ صورت توقف اور دیو کی ناقابل اصلاح نہیں ہی اِس لیئے میں یہہ سمجھتا ہوں کہ اِس شکایت کو ذہن میں رکھتے ہوئے اِس مسئلہ پر غور کرنا یا رائے ظاہر کرنا غلطی ہوگی کیونکہ یہہ شکایت عارضی شکایت ہی اور قابل علاج ہی •

جناب والا - اگرچہ دیوانی کے متعلق مجھے کچھ بہت تجربہ نہیں ہی لیکن میں یہہ عرض کر دیتا کہ اُس پُرانے طریقے یا روش کو چھوڑنے کے لیئے جتنے مددہ اسباب اور وجوہات ظاہر کیئے جانے چاہئیں وہ ظاہر نہیں کیئے گئے اور جیسا کہ ابھی ہمارے آپریل دوست تھا کہ ہندوستان سنکھ صاحب نے فرمایا تھا کہ ریونیو کورٹس (Revenue Courts) کے متعلق اِس قسم کا خیال جیسا کہ ظاہر کیا گیا کچھ بہت باعث فخر یا مبارکباد نہیں ہی - میں اُس کے متعلق پھر یہہ عرض کر دیتا کہ ہمیں اپنے پُرانے طریقے اور پُرانی روش سے ہٹنے کی کوئی خاص ضرورت نہیں ہی اِس لیئے پُرانے طریقے جاری رکھنے چاہئیں اور یہہ معمولی جھگڑے ریونیو کورٹس ہی میں زیادہ آسانی سے طے ہو سکتے ہیں جیسے اب تک طے ہوتے رہے ہیں - اب تک اِس کے خلاف کسی جماعت نے آواز بلند نہیں کی اِس وقت اچانک یہہ کہنا کہ یہہ پُرانا طریقہ تبدیل کر دیا جائے ایک بڑی زیادتی ہی اور اِس سے کاشتکاران اور زمینداران دونوں کو شکایت ہو سکتی ہی یعنی یہہ نیا طریقہ اہل معاملہ کے لیئے زیادہ دشواری اور دقت کا باعث ہوگا اِس لیئے میں بہت افسوس کے ساتھ اپنے معزز دوست بابو نیمی سرن صاحب کی ترمیم سے اختلاف کرنا ہوں •

Rai Sahib Lala Jagdish Prasad : I move an amendment to the amendment of my honourable friend Pandit Nanaak Chand. The object of my amendment is that suits falling under serial Nos. 13 and 14 for a value of less than Rs. 100 shall be triable by the tahsildar, and suits under these serials above Rs. 100 shall be triable by the assistant collector of the first class.

Hon'ble the President : This amendment is not in order here; it cannot be allowed.

Khan Bahadur Shaikh Masud-uz-Zaman : I support the amendment of Pandit Nanaak Chand. In opposing the amendment of Babu Nemi Sarau I only wish to say that perhaps he has overlooked the fact that the collector is after all the officer who appoints a lambardar, and if the cases

[Khan Bahadur Shaikh Masud-uz-Zaman.]

were transferred to the civil court, the collector would have little or no opportunity to see the conduct of the lambardar. The result will be that, no matter how irregular the lambardar may be in the payment of the co-sharer's profits, he will never be brought before the revenue courts and the collector will therefore not be able to see whether the lambardar behaves properly or not. So the advantage in having these cases tried by revenue courts is that they will be able to form an idea as to whether a particular lambardar is a good and regular payer of profits or not. It is frequently noticed that when the collector forms a bad impression of a lambardar and if he finds that cases are often instituted in the revenue court for the realization of profits and that the lambardar as frequently raises objections on the ground of submitting accounts, the collector usually removes the lambardar and appoints another co-sharer as lambardar of that village. I therefore submit, Sir, that it is in the fitness of things that these cases should remain triable by revenue courts. With these remarks I oppose the amendment to the amendment.

Pandit Govind Ballabh Pant : I do not propose to enter into the relative competence or qualifications of the civil and revenue courts. I think perhaps I might be charged with blasphemy or ingratitude if I disputed the competence of revenue courts to deal with everything under the sun, for so far as we who live in Kumaun are concerned, our cases, whether civil or revenue, have so far always been tried by revenue courts, and it would be nothing short of arrogance on my part to say that revenue courts are not capable of doing everything—even of doing things which nobody else may be capable of doing. But there are one or two points which I wish to bring to the notice of the honourable members, as, since I came in and listened to the debate, I find that no reference has been made to them. The first point that honourable members may bear in mind is this, that so far under the present Act suits under this chapter were triable only by courts of the assistant collectors of the first class and no such suit could be tried by a tahsildar.

Mr. R. Burn : May I point out to the honourable member that certain classes of profits suits were already triable by tahsildars up to Rs. 100.

Pandit Govind Ballabh Pant : I have got before me a copy of the Agra Tenancy Act and in Group B of the fourth schedule we find serial Nos. 16 and 17 which refer to cases under sections 164 and 165 respectively with the heading at the top "suits triable by assistant collector of first class in which appeal, if any, lies to civil court." That is the matter to which I will come later. We have got in Group B against section 164 "suit by a co-sharer against a lambardar for his share of the profits of a mahal, or of any part thereof." Against section 165 the entry is "suit by a co-sharer against a co-sharer for a settlement of accounts and his share of the profits of a mahal, or of any part thereof." I am not aware of any amendment to these clauses in this schedule. If there has been any, then perhaps the tahsildars have acquired those powers, but such amendments were not passed in open Council and are not known to many of us. So, so far as the particular clauses under discussion are concerned, suits governed by them were

triable exclusively by assistant collectors of the first class, and now by this amendment tahsildars are being empowered to deal with cases up to the value of Rs. 200. It is for the honourable members to decide whether it is in the interests of justice and of progress that these suits should be transferred from the courts of assistant collectors of the first class to those of the assistant collectors of the second class. It might indicate on the one hand that we have greater confidence in the tahsildars. That is not a very serious point, but it will also have other far-reaching effects.

The other point to which I refer again is of greater importance still. So far, as I just read over to you, the decrees in such cases were appealable to civil courts; all appeals lay to civil courts. But by giving place to these classes of suits in this group all appeals will lie to the collector and not to the civil courts, so that we are not only not moving in the right direction, but even disturbing the *status quo* by depriving the civil courts of their authority of supervision over the proceedings in the original courts in which these suits might have been tried. I leave it to the honourable members to decide whether even as appellate courts the collectors are more competent, more fit and more capable than the district judges. If it is so, I think it should be in the fitness of things to bring an amending Bill to amend the Bengal and Assam Civil Courts Act and to replace the civil by revenue courts. That would be more in the fitness of things and we would be saved from the anomaly of having two kinds of courts to deal with cases of practically the same nature. I do not think the question of the share of profits or suits concerning profits brought by co-sharers against co-sharers or lambardars is always of a very simple character. Sometimes it involves an issue as to negligence, which is certainly one of the very difficult and intricate problems which needs determination in such suits. Negligence is a question of law as well as of fact, and the determination of such questions, I think, lies naturally within the purview of civil courts. As I said at the outset, I do not very much mind which forum is chosen for this purpose, but I think the clause as it obtains not only maintains the *status quo*, but it goes much beyond that: it extends the jurisdiction of the tahsildars and it deprives the civil courts of appellate powers altogether. I have one serious grievance against this clause, and that is this. We all, the non-official members sitting in this House, have been for some time advocating the abolition of commissionerships. It is one of the points on which we have laid great stress and the Government in their last answer told us that their attitude towards this question would be greatly determined by the effect of the present Bill on the appellate work of commissioners. By adding to the work of the commissioners, by adding to the appellate powers of the commissioners, we are giving the Government a very strong handle against us. It will not lie in our mouths later and the Government will be in a position to tell us that as the commissioners have under the Agra Tenancy Act not only to deal with their ordinary administrative duties, but that certain statutory functions have been added to their routine duty, it is impossible to reduce their number by any substantial strength or to any substantial extent. This is for the honourable members to decide, whether it is proper that they should adopt a course to-day which will stand in the way of the fruition of one of the main

[Pandit Govind Ballabh Pant,]

problems which has been advanced so far by all political parties in this province, even by all parties, I should say, whatever views they may be holding on other questions. It is admitted by all that the civil courts are not less competent than the revenue courts. The only thing that is being urged is that the revenue courts are capable enough to deal with this matter, but if the revenue courts are fit enough to deal with this matter, the civil courts are nonetheless even abler to deal with all matters that can possibly arise in such cases I see no reason why the honourable members should fight shy of the abler tribunals. It may also be remembered that the questions affecting revenue matters as to the weight to be attached to revenue registers and records kept by revenue officers do arise frequently in civil suits. In all suits involving questions of proprietary title the courts have to interpret the entries in khewats, khasras, khataunis and jamabandis. Of course they are not ignorant of these papers and of the way in which entries are made in them. In fact they have to rely on them in questions of a much more serious character. In the circumstances to hold that they cannot make proper use of those papers when questions of the simpler character have to be determined is, to say the least, very anomalous. It means that though the civil courts may be fit to take a proper view of those papers where questions affecting thousands and lakhs are concerned, they are not fit to do so where questions affecting tens or hundreds alone are concerned. So I submit that it is in the larger aspects of the question that I invoke the sympathy of the honourable members of this House towards this amendment. They have to bear in mind other questions which are interlinked with their decision on this particular issue. I am prepared to accept, as I said at the outset, that so far as I am concerned I do not and dare not dispute the competency of the revenue courts, as they deal with all civil matters in our parts.

Pandit Nanak Chand : As I have already pointed out, the object of this amendment is to take away these intricate and important cases which are between landlords themselves as co-sharers and co-sharers or as co-sharers and lambar-dars from the court of the tahsildar and to transfer them to be heard by assistant collectors of first class. It is a matter of common knowledge that the Tenancy Bill Committee of 1924, on which my zamiindar friends were very well represented, considered that revenue courts including assistant collectors of first class who used to try cases above Rs. 100 and the tahsildars who used to try cases up to Rs. 100 were not competent to satisfactorily dispose of such cases, and the committee were of opinion that such cases can properly be decided by civil courts, which had better knowledge of law and were more particular in weighing evidence and in observing the procedure laid down for suits. Having regard to the fact that the drafting committee was fairly representative of the zamindars, I had thought that this was the demand of the zamindars themselves that such cases should be decided by civil courts. But the select committee, which again was fairly equally representative of the zamindars, went over the decision, the considered opinion, of the drafting committee and came to the conclusion, as if they had made a miraculous discovery, that the tahsildars could be trusted to try these intricate and important cases even up to a valuation of Rs. 200. I consider that this is not a sound decision of my zamindar friends, and I propose to them that they should exclude

cases coming under serials 13 and 14 from the court of the tahsildar and place them among the suits which are exclusively triable by assistant collectors of the first class.

Hon'ble Sir Sam O'Donnell: So far as Pandit Nanak Chand's amendment is concerned, I have practically nothing to add to what fell from Mr. Burn. I think the Council will agree that the extension of the jurisdiction of the tahsildar which is now proposed is quite reasonable in view of the much better qualifications which these officers now possess.

As regards the other amendment transferring certain suits to civil courts, we shall come later on to the question of appeals, the question to what authority appeals should lie—but the point we are now discussing is simply whether these cases should be transferred completely to the civil court or whether they should be tried, at any rate in the first instance, by the revenue court; and no valid reason has been given for removing these cases from the jurisdiction of the revenue courts. The issues are not intricate: they simply are questions of arithmetic and fact—and the revenue courts have far more experience than civil courts. Indeed, at one time it used to be the rule that civil courts, when a question of accounts arose, were empowered to ask the collector for a report, as he was admitted to be much better able to deal with accounts of this kind than civil courts. I should like also to point out how expeditiously cases are dealt with by the revenue courts. In 1923-24 there were before the revenue court 767,088 cases, and at the end of the year there were only 2,130 cases pending over three months. If the civil court records are examined, I do not think they will in that respect compare favourably with the revenue courts.

Hon'ble the President: The Hon'ble the Finance Member said appeals would be taken up later.

Hon'ble Sir Sam O'Donnell: Yes, Sir, I thought we were taking only the first two lines just now.

Pandit Govind Ballabh Pant: If we put the clauses here, will it be open to us to discuss the question as to whom appeals should lie to, later?

Hon'ble the President: I think so. We have not come to the words "appeal to collector" at all.

Pandit Govind Ballabh Pant: By implication are we not accepting all that?

Hon'ble the President: Not at all. The House has to decide for itself having all considerations in view.

Pandit Govind Ballabh Pant: I was simply putting a question as to whether if we put these clauses here, it will be open to us to deal later on with appeals?

Hon'ble the President: Certainly, yes. So far as the word "appeal" is concerned, that will come up later.

I should like the House to just note the effect of the various amendments. The first amendment proposed is by Pandit Nanak Chand that serials 13 and 14 be added to serials 1 and 2. The result of this would be that suits mentioned in serials 13 and 14 will become triable exclusively by an assistant collector of the first class rather than, as

[Hon'ble the President.]

provided by the Bill, by the tahsildar. To this an amendment has been proposed by Babu Nemi Saran that serials 13 and 14 be taken out altogether from group A. The result of this would be that these suits would be triable neither by the assistant collector, 1st class, nor the tahsildar under group A. The question of appeal will come up later. I shall first put the amendment of Babu Nemi Saran to the House—

Question put, that serials 13 and 14 remain part of group A.

The House divided: Ayes, 53; Noes, 15.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. E. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallowes.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. O. Desanges.
Mr. H. David.
Babu Khem Chand.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryapal Singh.
Rao Sahib Kunwar Sardar Singh.

Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Sa'id.
Rao Sahib Abdul Hameed Khan.
Nawabzada Muhammad E'jaz Ali Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Dr. Zin-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Suiyid Muhammad Ashiq Husain.
Khan Bahadur Mr. Ashiq Husain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.
Dr. Ganesh Prasad.

Noes.

Babu Narayan Prasad Arora.
Babu Mohan Lal Saksons.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Thakur Shiva Narayan Singh.
Rai Bahadur Pandit Kharagjit Misra.
Babu Nemi Saran.

Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyaya.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Babu Ram Chandra Sinha.

Hon'ble the President: The House has decided that serials 13 and 14 stand part of group A. Now the amendment of Pandit Nanak Chand is that these serials 13 and 14 should be added after serials 1 and 2.

Question, that serials 13 and 14 be inserted after serials 1 and 2, put and agreed to.

Hon'ble Sir Sam O'Donnell: I move, Sir, that the word "and" between "1" and "2" be omitted.

Question, that the word "and" between "1" and "2" be omitted, put and agreed to.

Khan Bahadur Hafiz Hidayat Husain : I beg to move

Pandit Nanak Chand : I have another amendment that "100" be substituted for "200."

Hon'ble the President : That will come later.

Hon'ble Sir Sam O'Donnell : There is a Government amendment No. 89 in the original list.

Hon'ble the President : I have asked Khan Bahadur Hafiz Hidayat Husain to move his amendment here because his amendment in effect is that serial Nos. 1 and 2 be taken out of this group A altogether. Let me point out that Khan Bahadur Hafiz Hidayat Husain has a peculiar knack of substituting his own draft for the provision in the Bill after taking the words of the Bill and adding a few of his own. It would be much better if he leaves the provisions in the Bill to which there is no objection and moves for his substantial amendment. In fact the amendment of Khan Bahadur Hafiz Hidayat Husain is that serial Nos. 1 and 2 be omitted. The other things can be taken up later. For the present he might confine himself to serial Nos. 1 and 2.

Khan Bahadur Hafiz Hidayat Husain : My difficulty is this. I have placed 1, 2, 9, 10, 11, 12, 13, and 14 in one group, group AA suits, triable exclusively by assistant collector, 1st class.

Hon'ble the President : What is the idea ?

Khan Bahadur Hafiz Hidayat Husain : The idea is this. I have got group A suits and these cases, when their valuation does not exceed Rs. 200, will be triable by assistant collector, 2nd class; and if their valuation is over Rs. 200 they will be triable exclusively by assistant collector, 1st class; but 1, 2, 9, 10, 11, 12, 13, and 14 will be triable exclusively by assistant collector, 1st class, whatever the valuation.

Hon'ble the President : We have already discussed 13 and 14.

Khan Bahadur Hafiz Hidayat Husain : Yes, we have done that.

Hon'ble the President : The honourable member can now say that 9 to 12 be also added to 1 and 2. You had better move it in that form.

Khan Bahadur Hafiz Hidayat Husain : Yes.

Hon'ble the President : I think the honourable member understands my point.

Khan Bahadur Hafiz Hidayat Husain : That serial Nos. 9, 10, 11, and 12 be added to serial Nos. 1, 2, 13, and 14.

The present arrangement in the Bill is in the nature of an innovation. Assistant collectors of 2nd class are either honorary or stipendiary. The latter are tahsildars, while the former are those on whom powers have been conferred mostly as a matter of honour. Time and again have we expressed in the Council the opinion that most of the honorary assistant collectors know nothing worth knowing. Some of them do not even know how to write, and I have heard of cases where assistant collectors can only put their thumb-impressions on their judgements. A state of affairs like the present does no credit to the system under which we live. If we entrust the assistant collectors of the 2nd class with further powers in the trial of suits, as contemplated

[Khan Bahadur Hafiz Hidayat Husain.]

in the Bill, I am afraid we would be going rather too far. Serial No. 9 refers to suits by a lambardar to recover from a co-sharer arrears of revenue, village expenses, and other dues; serial No. 10 refers to suits under section 222 of the Act, and serial Nos. 11 and 12 relate to suits filed under sections 223 and 224 respectively. Now, suits under all these sections are somewhat complicated, and I think that assistant collectors, 2nd class, should not be empowered to try these cases. As regards the tahsildars, I can only say that their duties are more of an executive character than judicial. In the mufassil the tahsildars attend court late in the evening, much to the inconvenience of the litigant public. At headquarters the main duty of the tahsildars is to look after the domestic and the social amenities of the officers in the station. There is no doubt that the tahsildars now are better educated than they used to be, but their legal training is just what it used to be. Therefore, suits such as those mentioned in serial Nos. 9, 10, 11, and 12, which are of a complicated nature, should not be entrusted to them, as they require a good grounding in law, which is not to be found amongst gentlemen exercising 2nd class powers. With these words I commend my motion to the acceptance of the Council.

Mr. R. Burn: The main effect of this amendment will be to transfer to assistant collectors of the 1st class items 9, 10, 11, and 12 in the schedule. These are suits which are connected, as the honourable mover has said, to some extent with profits, but they are suits which have for a long time been tried up to the limit of Rs. 100 by tahsildars. The Government proposal, which was lost on a previous occasion, was to entrust to tahsildars two other classes of profit suits. That has been settled and the honourable member wishes to go further. The assistant collector of the 1st class will be in the position of the pions Muhammadan of whom it was said, "*namaz muaj karane ko gaya gale par roza laga.*" I do not think that the honourable mover has really given adequate reasons for a change of that sort. I believe there is a parallel proverb among the Hindus "*Chaubi chhabbe banne gaya dube hi rah gaya.*"

Khan Bahadur Hafiz Hidayat Husain: I have purposely taken off this kind of suits from the category of group A suits in the fourth schedule, because I think they are suits of a complicated nature. Secondly, when we are going to extend the powers of tahsildars in the trial of those suits that are included in this group and are increasing their work, I think it would be much better to relieve them altogether of such cases which on account of their difficult nature should be tried exclusively by assistant collectors, 1st class. We are extending the jurisdiction of tahsildars from Rs. 100 to Rs. 200. This will add to their work pretty enormously. For these reasons I submit that the suits in question ought to be tried by the assistant collector, 1st class.

Hon'ble Sir Sam O'Donnell: As far as I can understand, all that we propose in this schedule is that the assistant collectors, 2nd class, should be entitled to try cases in the case of serials Nos. 9, 10, 11, and 12 when the valuation does not exceed Rs. 200, whereas at present they can try suits up to Rs. 100. Rupees 100 at the time when the existing law was passed was worth as much as Rs. 200 now. Prices have gone up in the interval.

Question put, that serials 9, 10, 11 and 12 be placed in the heading of group A along with 1, 2, 13, and 14.

The House divided : Ayes, 42 ; Noes, 27.

Ayes.

Babu Narayan Prasad Arora.
 Babu Mohan Lal Saksena.
 Babu Jai Narayan Chaudhri.
 Babu Bhagwati Sahai Badar.
 Thakur Manjit Singh Rathor.
 Rai Jagdish Prasad Sahib.
 Chaudhri Jaswant Singh.
 Pandit Nanak Chand.
 Thakur Shiva Narayan Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Rai Amba Prasad Sahib.
 Rai Bahadur Pandit Kharagjit Misra.
 Raja Suryapal Singh.
 B. b. Nemi Saran.
 Chaudhri Badan Singh.
 Rao Sahib Kunwar Sardar Singh.
 Thakur Sadho Singh.
 Raja Narayan Pratap Singh.
 Pandit Sri Krishna Dutt Paliwal.
 Pandit Yajna Narayan Upadhyay.
 Rai Sahib Babu Dip Narayan Roy.
 End-Lieut. Sahibzada Davi Pratap Narayan Singh, Rai Bahadur.

Bheya Hanumat Prasad Singh.
 Pandit Govind Ballabh Pant.
 Pandit Har Govind Pant.
 Babu Ram Chandra Sinha.
 Khan Bahadur Mr. Muhammad Aslam Saifi.
 Rao Sahib Abdul Hameed Khan.
 Nawabzada Muhammad E'jaz Ali Khan.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid ur-Rahman Khan.
 Dr. Zia-ud-din Ahmad.
 Khan Bahadur Hafez Hidayat Husain.
 Khan Bahadur Sheikh Masud-uz-Zaman.
 Khan Bahadur Mr. Muhammad Ismail.
 Khan Bahadur Saiyid Muhammad Ashiq Husain.
 Khan Bahadur Mr. Ashiq Husain Mirza.
 Khan Bahadur Munshi Siddiq Ahmad.
 Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
 Rai Bahadur Lala Mathura Prasad Mehrotra.

Dr. Ganesh Prasad.

Noes.

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
 Hon'ble Rai Rajeshwar Bali.
 Hon'ble Thakur Rajendra Singh.
 Hon'ble Nawab Muhammad Yusuf.
 Mr. G. B. Lambort.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Elliott.
 Mr. F. H. Tillard.
 Mr. H. A. Lane.
 Mr. R. L. Yorke.
 Mr. R. Burn.

Mr. A. W. Pim.
 Mr. B. J. K. Hallows.
 Mr. H. G. Billson.
 Mr. R. J. S. Dodd.
 Colonel A. W. R. Cochrane.
 Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenroder.
 Mr. H. O. Desanges.
 Mr. H. David.
 Babu Khem Chand.
 Lieut. Raja Durga Narayan Singh.
 Rai Bahadur Thakur Hanuman Singh.
 Mr. E. M. Souter.
 Mr. Tracey Gavin Jones.

Pandit Nanak Chand : I move that in lines 2 and 3 "Rs. 100" be substituted for "Rs. 200."

The object of this amendment is to allow the tahsildars to try suits the valuation of which does not exceed Rs. 100. Hitherto they have tried suits up to the valuation of Rs. 100, and I see no reason why their jurisdiction is proposed to be extended to suits of a valuation above Rs. 100. The Council has, by several provisions in this Bill, already added to the existing duties of the tahsildars, and those who have some experience of their courts know that, owing to many duties of an executive character, they find it difficult to attend the court regularly during court hours. The result is that litigants who come from distant parts have to wait till the tahsildar is able to take up cases late in the evening. This arrangement is extremely inconvenient to the litigants. If therefore suits ranging between the valuations of Rs. 100 and Rs. 200 are brought within their jurisdiction, it will add considerably to their work, which in all probability they will not be able to dispose of. The result will be that either the cases before the

[Pandit Nanak Chand.]

tahsildars will be disposed of in a summary manner or will be postponed from one date to another. This is injurious both to the interests of landlords and tenants. I therefore request the House to accept my amendment.

Hon'ble Sir Sam O'Donnell : I see no reason whatever for reducing the valuation proposed in the Bill from Rs. 200 to Rs. 100. As pointed out before, the value of Rs. 100 when Act II of 1901 was passed was equal to that of Rs. 200 at the present moment. As most of us know, the prices of various commodities for which we have to pay have gone up considerably. Moreover, the amendments already carried have taken away certain cases which would have gone to the tahsildars. There is no reason why the remaining cases up to the value of Rs. 200 should not be left to them. In the interval too, as Mr. Burn has pointed out, the qualifications of a tahsildar have considerably improved. They are much superior to what they were 25 years ago. I therefore think that it is quite reasonable that tahsildars should try suits up to the value of Rs. 200.

Maulvi Muhammad Obaid-ur-Rahman Khan : I think there should remain some work after all in the hands of the tahsildar and we should not hold the opinion that these men are incompetent to decide any suits. We have curtailed his work to a great extent by the two amendments which we have recently passed. The tahsildar will remain tahsildar and he will have to do one kind of work or another. Therefore, it is necessary that some cases remain in the hands of the tahsildar, because sometimes we find it very convenient to go to a tahsil. At the same time if we gave the work to the sub-divisional officer or the assistant collector of the 1st class, certainly he will have to do much work and delays will be frequent. There is already a complaint about the delay in disposing of cases which are decided by 1st class assistant collectors. Then in this case we will add to his work more and more and consequently the delay will also be increased and justice will suffer. Therefore, it is very necessary that these cases must be decided by a tahsildar and not by an assistant collector of the 1st class, and for these reasons I hope the amendment which is now before the House will be accepted.

Dr. Ganesh Prasad : It would really be a piece of impertinence on my part to pose as an expert in revenue matters. But it seems to me that there has been some feeling for some time past against tahsildars. I do not hold any special brief for tahsildars, but I rise just to offer a few remarks in opposition to the amendment of Pandit Nanak Chand. It is well known that there are a large number of tahsildars who are graduates just as myself and Pandit Nanak Chand are graduates. It is also true that many of these gentlemen are as honest as most of us can claim to be. They may have fairly humdrum duties to discharge, but there is not the least doubt, as has been pointed out by the Government members, that the qualifications of the tahsildars are much higher than what they were 30 years ago.

There is another aspect of the question which appeals to me. A short time ago the Hon'ble the Finance Member pointed out that no less than 767,088 revenue cases have been disposed of in one year. Supposing a large part of these cases are transferred to assistant collectors of the 1st class, who are generally deputy collectors, will it

not be necessary for us to increase the number of deputy collectors? Who is going to pay for that increase? Therefore, I strongly oppose the amendment of Pandit Nanak Chand.

Pandit Govind Ballabh Pant: I rise to a point of order. It appears to me that so far as serial No. 3 is concerned the amendment of Pandit Nanak Chand is out of order, for we have already passed clause 81, where we say that a suit of the value of less than Rs. 200 will be decided by the tahsildar. So I want to know whether this question can be discussed here.

Hon'ble the President: So far as part 1 of serial No. 3 is concerned Pandit Nanak Chand is out of court. But his amendment as regards section 132 mentioned in serial No. 3 and the other serials remain. To be on the safe side I would ask Pandit Nanak Chand to withdraw that part of the amendment concerning section 81 in serial No. 3.

Pandit Nanak Chand: I beg to withdraw this amendment as far as it relates to clause 81, serial No. 3.

Amendment by leave withdrawn.

Pandit Nanak Chand: I am afraid some of my friends misunderstood the object of my motion. The learned member for the Allahabad University started his remarks by saying that there is in certain quarters a feeling against the tahsildars. He alluded to their competence, to their honesty, and to the fact that some of them are graduates just like himself and myself. Perhaps the learned doctor wanted to say some good words for the graduate tahsildars who are his voters, and this he could not do without vaguely alleging that there is a feeling against them in certain quarters where their honesty and competence is questioned. I did not question either the competency or the honesty or the intelligence of the tahsildars in moving this amendment. I pointed out that on account of the many and multifarious duties that the tahsildars have to discharge they find it difficult to attend court during the regular court hours. I also based my amendment on the ground that under this very Act (under section 81 and some other sections of this Bill) the Council has added considerably to their existing duties. I am aware that by the last two amendments that the Council has adopted certain work which was proposed to be given to tahsildars has now been taken away and given over to assistant collectors of 1st class. But I maintain that case work under these serials beginning from 9 to 14 is not very heavy. I still maintain that the work which the Council has entrusted under this Bill to the tahsildar far outweighs the work that has been taken off by the last two amendments. I think the tahsildars will not be able to cope with the work that is proposed to be thrown on their shoulders, and with that object in view I still hope that my colleagues will reconsider this point and will accept this amendment.

Hon'ble Sir Sam O'Donnell: I think the honourable member might have given us credit for having considered whether the tahsildars would be able to try these suits or not. We after all are in as good a position as he is to judge whether they will have time to try these suits and we would not have proposed to have these suits tried by them if we had not been quite satisfied that the burden that we were imposing on them would not be excessive.

Question, that Rs. 200 stand part, put and agreed to.

Hon'ble the President: Honourable members will find that as the result of the amendment that the House has carried this group A is divided into two categories. Serials Nos. 1, 2, 9, 10, 11, 12, 13 and 14 form one and Nos. 3, 4, 5, 6, 7 and 8 form another.

Hon'ble Sir Sam O'Donnell: I beg to move that after the words "whatever the value" in line 1 the following be read "and in the case of other serials when exceeding Rs. 200 in value by an assistant collector of the 1st class, appeal to the commissioner. In the case of serials other than Nos. 1, 2, 9, 10, 11, 12, 13 and 14, when not exceeding Rs. 300 in value, by an assistant collector of the 2nd class, appeal to the collector."

The whole point of this amendment is simply to make the commissioner the appellate court instead of the collector in the case of certain suits. The fact of the matter is that if the appeals go to the collector, as in the Bill, the collector will be overworked. It must be remembered that under this Bill we are placing a great deal of additional work on the collector, and our fear is that if some relief is not given by transferring the appeals that I have mentioned to the commissioner, the collector will be heavily overworked and unable to dispose of appeals promptly.

That is the sole reason of this amendment.¹

Hon'ble the President: The effect of this amendment would be that appeals in suits mentioned in serials Nos. 1, 2, 9, 10, 11, 12, 13 and 14 would lie to the commissioner and in the case of other serials, if suits are below Rs. 200 the appeal would lie to the collector and above Rs. 200 to the commissioner. I hope the House will understand the effect of this amendment.

Khan Bahadur Hafiz Hidayat Hussain: I beg to move that for the word "commissioner" the words "civil Court" be substituted so far as serials 1, 2, 9, 10, 11, 12, 13, and 14 are concerned.

Hon'ble the President: Khan Bahadur Hafiz Hidayat Hussain's amendment is that where appeals lie from suits mentioned in serials Nos. 1, 2, 9, 10, 11, 12, 13, and 14 the appeal shall lie to the civil court and not to the commissioner. In other cases the appeal will lie to the commissioner.

Khan Bahadur Hafiz Hidayat Hussain: The reason of my amendment is that this is the first time that appeals are being taken away from the hands of district judges and are being placed in the hands of commissioners. Sir, I have no desire to enter into the controversy of the retention or non-retention of commissioners, which will be largely affected by the number of appeals this Tenancy Bill will give them, as I disagree with many of my honourable colleagues in the matter of the retention of commissioners. I do think that in the present state of district administration in our province, where junior officers must assume charge of districts, the retention of commissioners is necessary. But the duties of commissioners should in my opinion be confined more to executive and controlling work than to judicial work. Sir, persons like myself who have the experience of the working of courts of district judges and also of commissioners can say that the litigant public, the lawyers, and everybody concerned are more

satisfied with the decisions of district judges than the decisions of commissioners. This to my mind is due to the obvious reason that the district judges give more attention to their work than the commissioners do, for the simple reason that the trend of the mind of the commissioners is executive and the trend of the mind of the district judges is judicial, and in the second place the commissioners have more executive work to look to. Sir, the law also contemplates finality to attach to the judgements of civil courts. Under the Land Revenue Act, where appeals lie only to the revenue courts, invariably the decision of these revenue courts is open to contest in the civil courts. Take for instance suits for demarcation of land, suits relating to partition, suits arising under sections 42, 39, and so forth. Now, Sir, if the last word has so far remained with the civil courts, I see no reason whatever why this power of appeal should be taken away from the hands of the district judge and should be placed in the hands of the commissioner. Sir, the judicial administration of the Government is one of which anybody can be proud and I think it is a bad policy to derogate from authority of the civil courts. As I said before, the decisions of the civil courts are far more satisfactory and far more trustworthy than the decisions of the revenue officers and the revenue courts. It cannot also be said that on account of an increase in the revenue work there has been or there is likely to be any increase in the number of district judges. It is true that the number of additional district judges has increased, but that is not due to any increase in the revenue work. On the contrary, this is simply because work of a civil nature has increased. No reason whatsoever has also been put forward as to why commissioners should have these powers vested in them and why they should be taken away from the hands of district judges. Of course, as I said before, the question of retention or non-retention of commissioners is absolutely irrelevant to the consideration of this question, whatever its merits or demerits otherwise might be.

Khan Bahadur Mr. Muhammad Ismail: In matters of this kind I think it is advisable to stick to the old procedure with which persons concerned are familiar. Up to this time appeals from certain classes of cases which are indicated in the fourth schedule and which have been referred to by my honourable friend the mover, used to lie to the district judge; there has been no reason to be dissatisfied with their decisions and the Hon'ble the Finance Member has not stated in his speech any particular ground on which such cases ought to be transferred to the commissioner. The question of retention or non-retention of commissioners is more or less irrelevant for the purpose of this amendment, and I think that if we consider the matter on merits alone we will find that there are good grounds for appeals to go to the district judge. All these cases which are mentioned in serials 9, 10, 11, and 12 are cases between zamindars and zamindars. They are not between tenants and zamindars. They involve questions of proprietary title and are of a complicated nature. There would be another advantage if the appeal lies to the district judge. Where the matters go up in appeal the judgement of the civil court would be helpful to the assistant collector, and if it is found that the assistant collector has not followed a correct procedure, he will benefit by the judgement of the district judge. I am therefore in favour of the amendment to the amendment.

Maulvi Muhammad Obaid-ur-Rahman Khan : I support the amendment moved by my honourable friend Hafiz Hidayat Husain. It is on two grounds. First of all, it will be very inconvenient for parties to go always for such petty cases to a commissioner. It is certainly much more convenient for parties to attend the court of the district judge in their own district than to go to the commissioner's court which is outside that district. I also know that many clients take their own pleaders with them to the appellate court, and if the appeal lies to the commissioner, it will be very expensive for them to take their pleaders from their district to the commissioner's court. Secondly, honourable members know that at present some collectors are disposing of appeals that lie to commissioners, as is the case in my own district, where the collector hears commissioner's appeals. In these circumstances to add to the work of the commissioner by giving him more work of appeal will not be advisable. Perhaps the result will be that the collectors of different districts will be entrusted with the disposal of such cases and the collector will be the appellate court and not the commissioner, and moreover as at present there is no complaint against the present system, therefore there is no necessity of changing it and it will be certainly more advisable to give appellate powers to a district judge in these cases and not to a commissioner.

Khan Bahadur Shaikh Masud-uz-Zaman : I have only to point out that the original idea of appeals being made to the district judge was that these cases are more or less complicated ones and law points are to be decided. It is not advisable that the original suits may be tried by civil courts, but in such cases I think it is necessary that the district judge, who is a judicial officer and at the same time who is a better judge to see to the legal points, may be the final authority on these matters, and for this reason I think it is very necessary that the appeals should go to the district judge and not to the commissioner.

Rao Sahib Abdul Hameed Khan :

جناب والا —

میری زیادہ خواہش یہ تھی کہ میں آنریبل مسٹر پنت کے بعد بولتا لیکن چونکہ غلطی سے میں کھڑا ہو گیا تھا اور پریسڈنٹ صاحب نے حکم دے دیا اس لیے میں بول رہا ہوں — یہ مسئلہ جو اس وقت زیر بحث ہی حقیقت میں اس کے بعض پہلو اور بعض اس کے راز اس قسم کے ہیں کہ وہ بہت صفائی کے ساتھ بحث میں آنے چاہئیں۔ یہ بات جیسا کہ آنریبل مسٹر پنت نے اپنی پچھلی ترمیم پر تقریر کرتے ہوئے فرمایا تھا کہ کمشنروں کی آئندہ تعداد اور کمشنروں کے آئندہ وجود کو گورنمنٹ کی طرف سے یہ کہا جا چکا ہے کہ اس قانون کے پاس ہونے پر یہ دیکھا جائیگا کہ ان کے لیے کتنا کام کرنے کو ہے۔ جناب والا — تھوڑا سا عرصہ جو مجھے اس کونسل کے اندر آنے ہوئے ہوا ہے اس میں میں نے محسوس کیا ہے کہ اس ہاؤس کی متعلقہ رائے یہ رہی ہے کہ کمشنروں کی تعداد میں معقول کمی کی جائے۔ اس سے پہلے جو کونسل تھی اور جس میں ہمارے موجودہ صاحب صدر ایک ممتاز میمبَر تھے اُس کی بھی ہمیشہ یہی رائے رہی ہے کہ کمشنروں کی تعداد کم کر دی جائے یا کمشنروں کا ہمیشہ کے لیے خاتمہ کیا جائے۔ اگر اس وقت اس بل کے بنائے ہوئے ہم لوگوں

نے بہت سا کام کمشنروں کے لیئے پیدا کر دیا تو حقیقت میں ہماری طرف سے قریب ہو گئی اُن مطالبات کی جن پر ہم بہت زور دیتے رہے ہیں اِس لیئے میں سمجھتا ہوں کہ اِس موقع پر ہم لوگوں کا اجتماعی طور پر یہ اخلاقی فرض ہے کہ ہم اپنے پچھلے مطالبات کی پوری قوت کے ساتھ تائید کریں اور یہ طے کریں کہ اِس قسم کی اپیلیں بجائے کمشنروں کے جج کے یہاں جایا کریں *

جذاب والا - کمشنر کے یہاں اپیل نہ جانے کی موافقت میں بہت سی باتیں کہی جاسکتی ہیں جن میں میں سمجھتا ہوں کہ جو کچھ میں نے عرض کی ہیں وہ اِس ہاؤس (House) کے میمبران کے لیئے سب سے زیادہ ضروری اور قابل غور ہیں - کمشنر کا عہدہ ایک executive عہدہ ہے اور کمشنر کی مشغولیتیں اور مصروفیتیں خواہ وہ بیکار ہوں یا سوسمند نہ ہوں لیکن موجودہ حالت میں بہر حال بہت زیادہ ہیں اور جیسا کہ کسی موقع پر کہا جا چکا ہے کہ اُن کو مثل letter box کے خدمات انجام دینا پڑتی ہیں ہم کو اُس letter box میں کچھ اور خطوں کا اضافہ نہیں کرنا چاہیئے بلکہ اُس کے لیئے دوسرا ہی انتظام سوچنا چاہیئے تاکہ فریادی اپنی فریاد کو بہر طور پر پہنچ سکے اور ہمیں آئندہ بجٹ میں اِس بڑے خرچہ سے سبکدوش ہونے کا موقع ملے اور نیز ہماری پچھلی کونسل کے میمبران کا مطالبہ رہا ہے اور جو موجودہ کونسل کے میمبران کا مطالبہ رہا ہے اُس کے لیئے گورنمنٹ کو موقع ملے کہ وہ منظور کیا جائے اور اِس طرح سے ہماری ایک پُرانی خواہش یا مطالبہ جو ہمارے صوبے کے بہترین اصحاب نے ہمیشہ مختلف طریقے سے پیش کیا ہے وہ پورا ہو *

Pandit Govind Ballabh Pant: I move an amendment to the amendment of the Hon'ble the Finance Member and it is this that for the word "commissioner" substitute the words "civil court" wherever it occurs. I may just state what will be the effect of my amendment if it is adopted by the House. So far as serial Nos. 1, 2, 9, 10, 11, 12, 13 and 14, are concerned, it is exactly identical with the proposal of Khan Bahadur Hafiz Hidayat Husain. So far as Nos. 3, 4, 3, 5, 6, 7 and 8, are concerned, if I have correctly understood the amendment of the Hon'ble the Finance Member, my amendment is meant, if carried, to provide that in cases where the value of the subject-matter is below Rs. 200 the appeal will lie to the collector and where it is more than Rs. 200 the appeal will lie to the civil court. It is not necessary for me to dwell at great length on this amendment which I have just proposed. It is just based on the principle which has been enunciated so far in a very efficient manner and I propose that so far as petty suits are concerned, the collector will be the appellate authority and he will be in a position to dispose of them, but so far as suits of a larger value are concerned I would not bother the commissioner about them; let the ordinary judicial courts which have to deal with judicial matters be burdened with such suits. There is no reason why we should handicap the commissioner, who is primarily an administrative officer, by judicial matters. He has got larger responsibilities to discharge and he should be left free to deal with these things, specially in these days when questions of a momentous character may crop up any time which deserve and demand his attention. So, in the interests of better administration, I propose that the commissioner should be relieved of the appellate duties and

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liabilities completely and the ordinary forums which have nothing to do except to dispose of suits should deal with these matters. Honourable members should please bear in mind that my amendment, if carried, will affect only cases above Rs. 200. If they will refer to serial Nos. 3 to 8, they will find that there will be very few cases which will be of a value of more than Rs. 200 and it is in the interests of all concerned, including the Government and the commissioner, about whom I have already said that it will be in the interests of both, to relieve the commissioner for better and more important duties. By relieving him of these duties, we will be preparing the day when we may succeed in securing the abolition or reduction in the commissioners.

Khan Bahadur Shaikh Masud-uz-Zaman : Why "civil court" and not "the district judge"?

Pandit Govind Ballabh Pant : "Civil court", so that appeals may be transferred to the subordinate judge by the district judge where the appeal is below a certain amount and appeals may also be to the High Court where the value of the appeal is above a certain amount as is the case in civil cases. It is a more comprehensive term.

Hon'ble Sir Sam O'Donnell : I personally should prefer that appeals in suits in serial Nos. 1, 2, 9, 10, 11, 12, 13 and 14, should go to the commissioner on the general ground that it seems to me desirable that appeals in revenue cases should go to revenue courts. However, it is a fact that appeals in such cases do go at present to the district judge and as there seems to be a strong desire on the part of my zamindar friends that these appeals should go to the district judge, I shall not oppose the amendment of Khan Bahadur Hafiz Hidayat Husain. But I understand that Khan Bahadur Hafiz Hidayat Husain agrees with me that appeals in the other cases 3-8 should be tried as proposed in my amendment. That is to say, when exceeding Rs. 200 in value the appeals would lie to the commissioner and when they do not exceed Rs. 200 the appeal will be to the collector. I understand that he entirely agrees with me about that and I think the Council will agree that it is reasonable that these appeals should go to the commissioner.

Khan Bahadur Shaikh Masud-uz-Zaman : May I ask if the amendment to the amendment proposed by Pandit Govind Ballabh Pant can be discussed now?

Hon'ble the President : Why not?

Khan Bahadur Shaikh Masud-uz-Zaman : I was not certain because he had just put it in.

Hon'ble the President : It will be too late tomorrow.

Khan Bahadur Shaikh Masud-uz-Zaman : I thought that it was probably not accepted. My objection to his amendment is simply this, that up to this time the question was that appeals should go to the district judge.

Pandit Govind Ballabh Pant : I have no objection.

Khan Bahadur Shaikh Masud-uz-Zaman : The question simply was that the district judge was to hear all the appeals in all those cases coming under these serials, but if the amendment of Pandit Govind Ballabh Pant is accepted the result will be that, practically speaking, there will be no chance for the district judge to hear the appeal but for the subordinate

judge, and subordinate judges have up to this time, except in those districts where subordinate judges have got appellate powers, got practically no appellate power and the result will be that it will be a very ambiguous position. The appeals from other cases must either go to the district judge or to some other authority but it cannot be possible that civil courts as a whole may be taken together.

Pandit Govind Ballabh Pant: You may propose an amendment saying "district judge" for "civil court;" I have no objection.

Khan Bahadur Shaikh Masud-uz-Zaman: That is another question whether I am prepared to go so far as to propose that the district judge should hear appeals from all cases under this schedule, but my only objection was that as such it was not practical and could not be upheld.

Pandit Nanak Chand: I am glad that the amendment of my friend, Khan Bahadur Hafiz Hidayat Husain as far as it related to serial Nos. 1, 2, 9 and 10 to 14 has been accepted.

Hon'ble the President: By the Government.

Pandit Nanak Chand: Yes, accepted by the Government. That indicates that ultimately it will be accepted by the House as well.

My difficulty remains about serial Nos. 3 to 8. My friend Pandit, Govind Ballabh Pant has proposed an amendment that such appeals which are over Rs. 200 should go to a civil court, and the others should go, as proposed in this schedule, to the collector. I think the cases of smaller valuation can be decided properly by the collector and the parties will not have to go either to the district judge or to the commissioner, but in cases which are of a valuation of more than Rs. 200 my friend the leader of the Swaraj party has proposed that the appeals should go to the civil court. With all respect to him, I beg to submit that the term "civil court" is very vague and it will require to be interpreted, the Council ought to make it clear as to what is meant by the term "civil court." My attention has been drawn to clause 242 where I find a proviso which runs "Provided that when the amount of value of the subject-matter of the suit exceeds Rs. 5,000 the appeal shall lie to the High Court." It would have been more appropriate to propose "civil court having competent jurisdiction" to cover all civil cases. My friend the leader of the Swaraj party was labouring under some difficulty, as he suggested that some of those appeals should go to the subordinate judge, while the other appeals should go to the district judge. I would prefer to substitute in place of civil court the words "district judge." If the appeals go to the district judge, then the parties to the appeal will be saved from the trouble of having to go to distant places in the court of the commissioner to file the appeals and to get them heard. It will be in their interest that they should file these appeals in the court of the district judge where the evidence will be scrutinized more carefully than it would be possible in the court of a commissioner. For these reasons, Sir, I beg to move an amendment to the amendment of my friend, Pandit Govind Ballabh Pant, that for the words "civil court" the words "district judge" be substituted.

The Council here adjourned for lunch.

Babu Nemi Saran: I rise to support the amendment of my friend, Pandit Govind Ballabh Pant. Sir, before there is voting on this question I want to clarify the issues for the consideration of the House. There

[Babu Nemi Saran.]

are two distinct amendments before the House. One by Khan Bahadur Hafiz Hidayat Husain which keeps three forums of appeal, the first being that of the district judge in cases relating to serial Nos. 1, 2, 9, 10, 11, 12, 13 and 14, that is, those cases which are decided, of whatever valuation they may be, by assistant collectors of the first class; for these the forum of appeal shall be the court of a district judge. The second forum is that of the commissioner according to his amendment. That is, in cases of valuation above Rs. 200 regarding serial Nos. 3, 4, 5, 6, 7 and 8, which are triable by an assistant collector, first class, the appeal shall lie to the commissioner. And, thirdly, the forum is that of the collector, in cases where the valuation is under Rs. 200 regarding serial Nos. 3 to 8. Then, the position summed up is this that an appeal from the order of a tahsildar shall, as usual, lie to the collector. But the appeal from the order of an assistant collector of the first class, shall lie, in certain cases to the district judge, while in others to the commissioner. According to the existing law on this point there are only two forums of appeal. There is, first, the collector, that is, in cases of valuation of less than rupees one hundred, for till now the powers of the tahsildars were limited to rupees one hundred, the appeal lies to the court of the collector. And in all cases of the valuation of over Rs. 100 or of the nature mentioned in serial Nos. 1, 2, 9, 10, 11 and 12, the appeal was to the court of a district judge. But the amendment of Khan Bahadur Hafiz Hidayat Husain wants to make a departure from the present position in so far as he wants to introduce a third court as a forum of appeal, that is the court of the commissioner, while the amendment of my friend, Pandit Govind Ballabh Pant wants to retain exactly the position as it is at present. I am at a loss to understand why the Khan Bahadur Sahib thought it fit to introduce this third forum of appeal and to create unnecessary distinctions. It has been admitted on all hands that it has been the wish of the past as well as of the present Council that the commissionerships should be abolished, or at least reduced to a minimum number, and we also know that the Government has replied to many questions regarding this matter in various ways always shifting their ground from one point to another. At first they used to say that the number of commissioners shall be reduced to a certain number and that this Government had addressed the Government of India and the Secretary of State accordingly, in whose hands the power lay. But later on they took another position and that is evident from the answer given to question No. 17 on February 25, 1926, asked by Rai Bahadur Lala Mathura Prasad Mehrotra Sahib. The Hon'ble the Finance Member in reply said: "No action will be taken till the effect of the new tenancy legislation on commissioners' appeals is seen." That is the condition precedent to the abolition of commissionerships—that the number of appeals to the courts of the commissioners should be very limited. From the wordings of the Government's reply, it can safely be inferred that the reason, the only reason, which I at least can see, for putting in the court of commissioner as the forum of appeal, was that the Government wanted to provide some work to this official in order to tell us afterwards: "Well, this is the work which you have entrusted to this official and now you want to abolish the post. It is impossible. The things must remain as they are. The commissioner's hands are now full." After all that the-

honourable members on the cross benches have said, I want to put this question to them :—" Is it or is it not necessary, under the present circumstances and when all the facts are before us, that we should give as little work as possible to the commissioners in order that it may be said whenever the question of abolition of commissionerships comes before the next House:—" Here is a commissioner who has got no appellate work to do and his post can safely be abolished, and if not altogether abolished at least their number may be reduced."

Sir, I again turn to the arguments of Khan Bahadur Hafiz Hidayat Husain Sahib. He has admitted without any reservation that the justice which a client gets in a civil court is decidedly of a superior character and that the parties are better satisfied with the decisions of the civil courts than with the decisions of revenue courts, including the courts of commissioners. Holding these views which he has expressed in his speech I do not know why he thought it necessary that the court of commissioner should be the forum of appeal in a few cases.

Lastly, Sir, I again want to point out to honourable members that they have not made out any case nor has my friend Khan Bahadur Hafiz Hidayat Husain Sahib in favor of the departure which it is proposed to introduce by this amendment. The present law as it stands has worked very well all these years. I do not think that there has been any complaint against the decisions of these civil courts. I do not think therefore that unless a clear case is made out for the amendment we should depart from the present position. I, Sir, want to appeal to the honourable zamindar members that they should look at this question from a broader point of view and from a dispassionate point of view. They should not be obsessed by the fact that this amendment has been moved by my friend, Pandit Govind Ballabh Pant, who was the framer of the amendment which introduced in the Bill clause 143 or other clauses which might have gone against their interests. There have been some cases in which we have, according to our rights opposed or supported the zamindar members and I do not think the zamindar party should turn this clause into a handle to avenge the grievances that they cherish against us. In the present case the interests of the country are involved, and the matter really does not affect either the landlords or the tenants specially. Therefore, I would ask my zamindar friends to look at the question dispassionately and to vote on it solely on its merits.

Hon'ble Sir Sam O'Donnell: I do not propose to discuss the question about the retention of commissioners, which is not relevant to the proposal under discussion. Our object in proposing the substitution of "commissioner" for "collector" as regards appeals relating to this class of suits is to relieve the latter of work, which, if left with him, might impose an excessive burden on him. As I have already pointed out, we are placing a great deal of work on the shoulders of the collector, and it is not desirable to add any further burden.

As to the suggestion that our object in making this proposal is to increase the work of commissioners and thereby to render their retention more necessary, I wish to point out that on account of the change in the status of non-occupancy tenants there will be a large reduction in the number of appeals to the commissioners. At present the number of ejectment appeals which go to commissioners every year is very large,

[Hon'ble Sir Sam O'Donnell.]

but in future their number will be considerably reduced. Suits under serials 3 to 8 will be a mere fraction of the number of ejectment appeals which go at present to the commissioners.

Hon'ble the President: In putting this amendment as well as the other amendments thereto I have to depart from the usual practice. Rather than confine myself to the phraseology of the various amendments moved, I wish to summarize the whole question in a nutshell and then will leave it to the Hon'ble the Finance Member or to his legal advisers to draft the necessary amendments to give effect to the decision of the House. Group A, can be divided into two categories, one relating to suits triable exclusively by assistant collectors, first class, and the other concerning suits triable exclusively by the tahsildars. Now, as regards the latter, suits of a valuation not exceeding Rs. 200 will be triable exclusively by the tahsildar, and in this case the appeal will lie to the collector. There is no amendment to this. As regards the suits triable exclusively by assistant collectors, first class, they can again be divided into two parts, the first dealing with serial Nos. 1, 2, 9, 10, 11, 12, 13 and 14, and the other relating to serial Nos. 3 to 8 of the money value more than Rs. 200.

Khan Bahadur Hafiz Hidayat Husain has proposed an amendment that so far as suits mentioned in serial Nos. 1, 2, 9, 10, 11, 12, 13 and 14 are concerned, appeals should lie to the civil court, and not to commissioner. To this the Hon'ble the Finance Member has agreed. Pandit Govind Ballabh Pant, on the other hand, wants that in serial Nos. 3 to 8 also, where the value of the suit is more than Rs. 200 and which are triable by the assistant collector, first class, the appeal should lie to the civil court while according to the Hon'ble the Finance Member the appeal should lie to the commissioner. To the amendment, however, of Pandit Govind Ballabh Pant, Pandit Nanak Chand has moved a verbal amendment, namely, that the words "civil court" be substituted for the words "district judge."

Now we come to the category which relates to suits triable by assistant collectors, first class. Let us confine ourselves for the time being to suits in the case of serial Nos. 1, 2, 9, 10, 11, 12, 13 and 14. They would be triable exclusively by assistant collectors, first class. In these cases appeals according to the Hon'ble the Finance Member should lie to the commissioner and according to the mover of the amendment, Khan Bahadur Hafiz Hidayat Husain Sahib, should lie to the civil court. Now the question I put to the House is that appeals in suits mentioned in serial Nos. 1, 2, 9, 10, 11, 12, 13 and 14 should lie to the civil court.

Question, that the appeals in suits mentioned in serial Nos. 1, 2, 9, 10, 11, 12, 13 and 14, should be to the civil court, put and agreed to.

Hon'ble the President: The next point is that in the case of suits mentioned in serial Nos. 3 to 8 when the value exceeds Rs. 200 and the cases are tried by assistant collectors, first class, appeals should lie to the commissioner according to the Hon'ble the Finance Member and should lie to the civil court according to Pandit Govind Ballabh Pant.

Question put that the appeal in these cases should lie to the commissioner.

The House divided: Ayes, 26; Noes, 45.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. E. L. Yorke.
Mr. E. Burn.

Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Rai Bahadur Babu Ram Nath Bhargava.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Noes.

Babu Narayan Prasad Agra.
Babu Mohan Lal Sakseena.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Bathor.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Khareggjit Misra.
Raja Suryapal Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sa'dho Singh.
Pandit Jhanni Lal Pande.
Lieut. Raja Durga Narayan Singh.
Pandit Sri Krishna Dutt Pahiwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhyaya.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Bavi Partap Narayan Singh, Rai Bahadur.

Bhaya Hanumat Prasad Singh.
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Babu Ram Chandra Sinha.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Nawabzada Muhammad E'jaz Ali Khan.
Khan Bahadur Chaudhri Amir Hassan Khan.
Mr. Muhammad Ismail Ali Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Mr. Ashiq Husain Mirsa.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Jagannath Bakhsh Singh.
Dr. Ganesh Prasad.

Question, that these appeals should lie to the civil court, put and agreed to.

Hon'ble the President: The effect of this amendment carried by the House together with the amendment carried previously is to make the amendment read as follows:—

"Suits triable, in the case of serial Nos. 1, 2, 9, 10, 11, 12, 13 and 14, whatever the value, and in the case of other serials when exceeding Rs. 200 in value, by assistant collector of the first class—appeal to the civil court, and in the case of serials other than 1, 2, 9, 10, 11, 12, 13 and 14 when not exceeding Rs. 200 in value by assistant collector of the second class—appeal to collector."

Question, that this amendment be substituted for the heading in the Fourth Schedule, put and agreed to.

Pandit Nanak Chand: I move that in the column "Period of limitation" "three" be substituted for "one". This period of one month is too short and is not likely to give any chance to the tenant for settling matters with the zamindar out of court. I therefore propose that the period of limitation should be extended to three months.

Khan Bahadur Shaikh Masud-us-Zaman: This amendment is open to many objections. If the tenant does not come forward promptly to claim compensation for the rent which he has paid in excess, it will naturally be assumed that there is something wrong on the part of the tenant who alleges that he has been charged excessively. It is surely unreasonable to allow the tenant more than one month for raising objection or claiming compensation for the excessive rent which has been charged deliberately or unconsciously by the landlord. If the tenant has a genuine case, he can come forward within a month. If a period of three months is allowed, then it will surely lead to concoction of evidence, and the landlords will be put to much difficulty. For these reasons I oppose the amendment.

Hon'ble Sir Sam O'Donnell: The 1924 Committee say on page 32 of their report: "The limitation has been reduced from three months to one month. It was felt that if a tenant has a real grievance regarding illegal exaction of rent he should come to court at once for redress and that delay only means an opportunity for concocting evidence." I think the view taken by the committee is sound, and that we should retain the period of one month.

Question, that the word "one" in column 4 against serial No. 1 stand part of the Schedule, put and agreed to.

Pandit Nanak Chand: I propose that in the Fourth Schedule, group A, serial Nos. 6, 7 and 8, in the column "period of limitation" substitute "three" for "two".

Hon'ble Sir Sam O'Donnell: All I need say is that I consider a period of two months enough, and I think the Council will agree with me.

Question, that the words "two months" stand part of the Schedule, put and agreed to.

Hon'ble Sir Sam O'Donnell: I move that in group A of the Fourth Schedule, third column of serial No. 12, the word "proprietor" be read for "proprietors".

This is merely a verbal amendment.

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I move that in group A of the Fourth Schedule in the fifth column against serial No. 13 the words "when the share of the profits became payable" be substituted for the word "ditto."

This amendment corrects a mistake in the Bill.

Question, that the words in serial as reported stand part, put and negatived.

Question, that the above amendment be made, put and agreed to.

Khan Bahadur Hafiz Hidayat Husain: I beg to move that another serial be added to group A which should be numbered 15 giving for description of the suit, "suits for the ejectment of a tenant on the grounds specified in section 84," the period of limitation "one year," time from which period begins to run "when the forfeiture is incurred or the condition is broken" proper court-fees, "as in the Court-Fees Act 1870." Now, Sir, this section 84 of the present Bill corresponds to section 57 of Act II of 1901. Under section 57 equivalent to present

section 84 a tenant is liable to ejectment for an act detrimental to the holding or for breach of the conditions of his tenure. Previously also, we find that in group B, Fourth Schedule, serial No. 13, suits for the ejectment of a tenant on the grounds specified in clause (b) of section 67 were heard by assistant collectors of the first class and the appeal, if any, lay to the civil court. So that the civil court is the proper forum for adjudicating on this complicated affair as ejectment for breach of condition or forfeiture. Now, Sir, whether the conditions of a lease have been broken or not or whether the tenant is liable to ejectment or forfeiture are points not easy to decide, and these are points on which cases have gone up even to the Privy Council. Therefore, I think, that the present rule should be maintained and no departure be made from the present practice.

Khan Bahadur Shaikh Masud-uz-Zaman : I rise to support this amendment, although it has been my personal experience that sometimes judges also can make lawful mistakes on points of law, in cases arising out of section 57 of the present Act, yet I am sure that this particular section requires a good deal of investigation. In many cases scientific investigation has been considered very necessary; not only scientific but legal points very often arise; and I think it is only reasonable that only judicial officers should have the power to decide appeals on these points. From the very nature of the cases coming under this section it will be very difficult to say whether they are really detrimental or whether they are really breaches of contracts. These are legal points. Even in second appeals, when revisions are not admitted except on points of law, the interpretation of a document becomes a legal point. So it is practically a legal point and all legal points should always remain as far as possible in the hands of the High Court. I also know that in certain cases where the authority is given to the Hon'ble the Board of Revenue to refer revenue cases on points of law to the High Court, cases under section 57 have been referred to the Hon'ble the High Court.

For these reasons, I think it is absolutely necessary that this matter should remain as far as possible in the hands of the judicial authorities and the Hon'ble the High Court should be the final authority on the point.

Hon'ble Sir Sam O'Donnell : This amendment now proposes to restore the law as it stands in the present Act; also it is in line no doubt with the amendments which the council has already accepted; and, although personally I prefer the provision in the Bill, still that being the position, it would be useless for me to attempt to argue further against it.

Question, that the new serial be added to group A, put and agreed to.

Question, that appeal in the case of suits under this new serial, should go to the district judge, put and agreed to.

Hon'ble the President : As a result of this, a consequential amendment will have to be made.

Mr. H. A. Lane : I beg to move a consequential amendment. That in the heading of Group A—suits in the Fourth Schedule after the figure '2' the figure '3' be added and the figures "2 to 14" be re-numbered as "3 to 15".

Hon'ble the President : The amendment proposed is that this new serial be added as No. 2 and that all the figures of the subsequent serials be changed accordingly, that is from "2" onwards the figures will be 3 onwards, so that serial No. 14 will be no. 15.

Question that the above change be made put and agreed to.

Hon'ble the President : The second amendment is that suits relating to this new serial should be triable by assistant collector of the first class and appeal will lie to the civil court.

Question that this change be made put and agreed to.

Question that Group A of the Fourth Schedule as amended, stand part of the schedule put and agreed to.

GROUP B,—SUITS.

[Suits triable by Assistant Collector of the first class in which appeal lies to Commissioner.]

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	37(2)	For division of a holding	None ..	None	On rent payable in respect of the part to be separated.
2	44	For ejectment of trespasser and damages.	Twelve years	When the landholder first knew of the unauthorised occupation.	On rent payable as in the Court Fees Act, 1870.
3	45	For determination of rent,	Three years	When the tenant's occupation of the land without rent being fixed commences.	As in the Court Fees Act, 1870.
4	60	For commutation of rent	None ..	None	Ditto.
5	61	For enhancement or abatement of the rent of a fixed-rate, ex-proprietary, occupancy or statutory tenant, or heir of a statutory tenant.	Do. ..	Do.	Ditto.
6	62	For enhancement or abatement of rent against or by a number of tenants collectively,	Do. ..	Do.	The same as if the suit had been brought by or against a single tenant.
7	70	For enhancement of the rent of a non-occupancy tenant.	Do. ..	Do.	The same as in the case of occupancy tenant under the Court Fees Act, 1870.
8	70	For abatement of the rent of a non-occupancy tenant.	Do. ..	Do.	As in the Court Fees Act, 1870.
9	71	For the avoidance of a lease for a period exceeding term of landlord's engagement with the Local Government.	One year..	From date of declaration of the new assessment.	According to the amount of the rent payable under the lease.

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court fees.
10	82	For relief against a tenant or his transferee on account of an illegal sub-lease or other transfer.	None ..	None	As in the Court Fees Act, 1870.
11	84	For the ejectment of a tenant on a ground specified in section 84.	One year..	When the forfeiture is incurred, or the condition is broken.	Ditto.
12	92	For the ejectment of a non-occupancy tenant who contests his liability to ejectment,	None ..	None	According to the amount of the rent payable by the tenant.
13	99	For recovery of possession of a holding, or for compensation, or both.	Six months	When the wrongful dispossession takes place.	As in the Court Fees Act, 1870.
14	106	To set aside a notice of surrender.	Fifteen days	The date of the receipt or service of the notice.	Eight annas.
15	108	For possession by an heir or reversioner.	Six months	The date of entry by the landholder.	As in the Court Fees Act, 1870.
16	121	For a declaration of plaintiff's right as tenant	None ..	None	Eight annas.
17	122	By a landholder for a declaration as to who is his tenant.	Do. ..	Do.	Ditto.
18	123	For a declaration as to any matter specified in section 123.	Do. ..	Do.	Ditto.
19	125	For a lease or counter-part.	Do. ..	Do.	As in the Court Fees Act, 1870.
20	186	For assessment of revenue on a rent-free grant.	Do. ..	Do.	According to the annual letting value of the land as estimated by the plaintiff.
21	187	For fixing rent on a rent free grant.	Do. ..	Do.	Ditto.
22	188	For the ejectment of a rent-free grantee.	Twelve years	As in section 189..	Ditto.

SCHEDULE IV : GROUP B.—SUITS.

Hon'ble the President: Now we come to Group B. Is there any amendment to it?

Hon'ble Sir Sam O'Donnell: I have an amendment to the heading. It is No. 88. I beg to move that for the heading of Group B the following be substituted:—

“Suits triable by assistant collector of the first class—appeal to commissioner except in the case of serial Nos. 20, 21 and 22, which are governed by section 195.”

Appeals in the case of these serials are governed by the Land Revenue Act as provided in clause 195 of this Bill. The heading of the schedule as drafted by the committee contradicts the provisions of clause 195, and this amendment brings it into agreement.

[Hon'ble Sir Sam O'Donnell.]

Question that the heading of Group B as reported by the committee stand part of the schedule put and negatived.

Question that the amendment proposed to the heading of Group B be made put and agreed to.

Hon'ble Sir Sam O'Donnell: I move that in column 6 in line 3 after the word "separated" the words "as in the Court Fees Act, 1870" be added.

The object of this amendment is to supply an omission, as the court fee on the rent payable should be calculated in accordance with the provisions of the Court Fees Act, 1870.

Pandit Nanak Chand: As the Hon'ble Finance Member has already moved his amendment, I will move my amendment as an amendment to his amendment. I propose that for the court fee entry in column 6 the words "eight annas" be substituted. These suits are brought by those co-tenants who are weaker and poorer and who have been oppressed by the stronger co-sharer and who have been kept out of their proper share of land or cultivation. I therefore think that the court fee in such cases should be only eight annas and not as laid down in the Court Fees Act.

Hon'ble Sir Sam O'Donnell: I see no reason for this amendment. The honourable mover says that the tenants who bring these suits are poor and oppressed people. I do not know why he should make that assumption. Why should he assume that every tenant, who wants his holding to be divided is an oppressed person. The proper court fee is surely the court fee calculated on the rent payable. That is quite reasonable.

Pandit Govind Ballabh Pant: I have only to suggest one thing for the consideration of the honourable members that in suits for partition the applicant has to pay only eight annas in court fee. Where partition of immovable property is involved, it can follow only on an application in the revenue court. The amendment is on the same footing. He does not pay the court fee, but pays one per cent. on the basis of the Stamp Act, which is much less than the court fee which is seven times more.

Khan Bahadur Mr. Muhammad Ismail: I think the analogy of partition suits will not hold good. Honourable members who have had experience of partition suits know that a very large sum has to be deposited in the first instance, which later on he realizes from the other co-sharers. The amount sometimes comes to as much as Rs. 400 or Rs. 500. Of course it depends upon the area of the village that is to be divided. In this case there does not seem to be any reason for reducing the rate.

Pandit Nanak Chand: I have nothing more to add.

Question that the words "as in the Court Fees Act, 1870" be added after the word "separated" in line 3 of column 3 put and agreed to.

Hon'ble the President: The amendment moved by Pandit Nanak Chand is that in column 6 of Schedule 4, Group B, serial No. 1, "eight annas" be substituted for "on rent payable in respect of the part to be separated."

Question that the words "on rent payable in respect of the part to be separated as in the Court Fees Act, 1870" in column 6 of serial no. 1 stand part put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that the entries in the fourth and the fifth columns against serial No. 3 of Group B be deleted, and that the words "as in section 45" be substituted in both places. Section 45 provides that "whenever any person has been admitted to the occupation of land, or permitted to retain possession of land, by any one having a right to admit or permit him with the intention that a contract of tenancy should thereby be effected, but without any rent being fixed, either he or the person so admitting or permitting him may at any time during the period of his occupation or within three years after the expiry of such period sue to have rent fixed thereon." The entries in the schedule are not consistent with the limitation prescribed in the section itself, and this amendment proposes to remove that inconsistency.

Hon'ble the President : I think Pandit Nanak Chand's amendment is the same.

Pandit Nanak Chand : Yes, Sir.

Hon'ble the President : The amendment is that the entries in the fourth and the fifth columns against serial No. 3 of Group B be deleted and that the words "as in section 45" be substituted in both places.

Question that the words as they stand in the schedule stand part put and negatived.

Question that the words "as in section 45" be inserted in both places put and agreed to.

Pandit Govind Ballabh Pant : I propose that the words "six months" be replaced by "one year" in column 4 of serial No. 13. The effect of this amendment will be that a tenant who is wrongfully dispossessed from his holding will be entitled to sue for the recovery of the possession of the holding for 12 months after his dispossession from the holding. I do not think that many words are needed in support of this amendment as it seems to be but fair that the tenant who has been wrongfully dispossessed should have at least a period of 12 months to recover his holding. The clause applies only to the tenants who have not only been dispossessed but who have been dispossessed wrongfully, and there is a corresponding clause in this very group as serial No. 2 where a trespasser can be ejected up to a period of 12 years. This proviso is in every way right and desirable that a trespasser should be liable to be ejected up to a period of 12 years; but so far as the ejectment of a tenant is concerned this period of six months is certainly inadequate, for when a person wrongfully dispossesses him he ousts him from certain rights which he possessed originally in his holding and to that extent a grave wrong was done to the tenant who wanted to dispossess him wrongfully. I may also remind the honourable members that in the Oudh Rent Act the period prescribed is one year, so my amendment has the further support of a precedent which obtains today in the other part of this very province.

Khan Bahadur Mr. Muhammad Ismail : I beg to oppose this amendment. There is no analogy in this case of a trespasser and a case of a tenant who has been illegally or wrongfully dispossessed. In the case of a trespasser a landlord may have a big estate and he may

[Khan Bahadur Mr. Muhammad Ismail.]

be residing 20 miles or 30 miles away from the place and in some cases either because of the laches of the karinda, or inadvertently, or for want of knowledge, some third person may take possession of a plot of land. The ordinary common law of the land will apply in that case and 12 years' limitation is the proper period that ought to be prescribed for that. In the case of wrongful ejectment it follows that the tenant has a complete knowledge of the fact that he was wrongfully dispossessed. He knew perfectly well that he should not have been dispossessed and he has been dispossessed. He has got six months to think it over and to go to court for redress. If that is not done and if he is allowed one, two or three years, then you will find that in the meantime other tenants have come in who have not been wrongfully given possession but rightfully given possession, and under the definition given in this Act they must have become life-tenants. If you allow the period of limitation to be extended to a longer period, and that may dislocate affairs. Therefore in the case of a tenant who is not a proprietor but who has got merely a right of occupancy, if he within six months does not think it worth while to come forward, it is but right and just that he should not be allowed to go to court after the expiry of that period. There is another point which ought not to be lost sight of, and that is that if you allow a period of one year or more, then there is a temptation of false suits being brought in the meantime. A tenant may have willingly given possession of certain land and after expiry of some time he may come forward and say that he was wrongfully dispossessed. It will be very difficult for the court to decide, for there will be only oral evidence to fall back upon, and it will be very unsafe to allow such cases to be brought in court.

Hon'ble Sir Sam O'Donnell: I do not think there is really any analogy between the period of limitation prescribed in the case of the ejectment of a trespasser and the period of limitation prescribed in this case. The period of twelve years prescribed in the former case is the period of adverse possession which gives proprietary right. I mean twelve years' adverse possession gives the trespasser proprietary right. That is why the period of twelve years has been fixed.

Six months in the case of wrongful dispossession is the existing period, and as far as I know it works quite satisfactorily. No complaints regarding the period have been received. On the other hand Mr. Burn tells me that he sees a good many cases in Oudh where the period allowed is one year, and his experience is that this longer period tends to lead to cases being faked and evidence fabricated. I think therefore that six months is quite sufficient and that it would be a mistake to alter it.

Rao Sahib Abdul Hameed Khan :

جناب والا —

میں اس ترمیم کے متعلق جو میسز آنریبل دوست مسٹر گوہند بلیہ پتہ نے پیش کی ہے، عرض کرنا چاہتا ہوں کہ میں ایک دیہات کا باشندہ ہوں اور دیہات میں زیادہ حصہ میری عمر کا گذرا ہے اور میں اس مسئلہ پر دیہاتیوں کے نقطہ نگاہ سے روشنی ڈالنے کی صلاحیت اور قابلیت رکھتا ہوں۔

دیہات میں عام طور پر کہا جاتا ہے کہ آج کل کی کچھڑی یا عدالت میں جو مقدمات جاتے ہیں اُن کا نتیجہ یہ ہوتا ہے کہ جو جیتا ہے وہ ہارتا ہے اور جو ہارتا ہے وہ مر جاتا ہے۔ ایسی صورت میں کوئی ترمیم اس قسم کی پیشی کرنا جس سے مقدمہ بازی میں اضافہ ہو یا جس میں مقدمہ بازی کے اضافہ کا امکان ہو بہت بڑا ظلم ہے کاشتکاروں کے اُدھر جیسا کہ ہم سب جانتے ہیں اور یقین رکھتے ہیں کہ وہ ایک نہایت غریب سیدھا سادہ اور بھولا طبقہ ہے۔ آپ یہ بھی جانتے ہیں کہ ہمارے صوبے میں ہر سال کتنے تعلیم یافتہ لوگ قانونی امتحان میں کامیاب ہو کر نکلتے ہیں اور اُن کی روزی کا صرف اس پر انحصار ہے کہ وہ کاشتکار اور زمینداروں کے درمیان جھگڑے کی باتیں پیدا کریں اور اُن کو بہانہ اپنی جیب میں فیس ڈالیں۔ جب ایک طرف ہمارے یہ دشمن ہمیں لڑانے کے لیے موجود ہیں اور ہمارا سیدھا بن اور ناواقفیت ہمیں لڑانے کے لیے بہت کافی ہے تو اور ایسے مواقع اور صورتیں پیدا کرنا جس سے کاشتکاران اور زمینداران کے درمیان جنگ و جدل میں اضافہ ہو میرے خیال میں بہت ہی بڑا ظلم اور زیادتی ہے اور میں یہ عرض کرنا کہ یہ وہ ترمیم جو اس House میں پیش کی جائے جس سے مقدمہ بازی میں بجائے کمی کے اضافہ ہو ناقابل منظروری ہے۔ حالانکہ اس ترمیم کے پیش کرنے والے میرے ایک ایسے معزز دوست ہیں جیسے کہ مسٹر پنٹ لیکن ہم کو اپنے کاشتکاروں کو کوئیں میں نہیں ڈالنا چاہیئے اور نہ ایسی کوئی ترمیم پاس کرنا چاہیئے جس سے غریب کسانوں اور اُن کے بچوں کے ہسینہ کی گڑھی کمانی کا روپیہ وکیل صاحبان کی جیب میں جاوے اور وہ اُن کی چکنی چڑی باتوں میں آکر تباہ ہو جائیں۔ لہذا میں نہایت شدت سے اُس کی مخالفت کرتا ہوں اور اُمید کرتا ہوں کہ میمبران کونسل میری وجوہات اختلاف پر غور کرتے ہوئے میری تائید کریں گے۔

Pandit Govind Ballabh Pant: I have little to say in reply to the ingenious arguments of the last speaker. I only find consolation in the fact that Mr. Ismail who is a zamindar also happens to be a vakil. So far as I am personally concerned we will not stand to benefit by this provision as it does not apply to the major portion of my district. So I did not move the amendment with a view to provide work for many of the new recruits to the legal profession who I admit perhaps do not get enough to keep them going, but I thought that where a person is entitled to a remedy, and where the provision is specially made to meet the case of one who has been wrongfully ejected, he should not be deprived of his remedy if he fails to, or is prevented by reasonable causes, from moving the court before the period of six months has expired. In such cases I thought one year would be perhaps more reasonable. I never suggested that the case of a trespasser is on all fours with that of a tenant wrongfully ejected by his own landlord. I referred to that just to indicate that a long period should not necessarily be considered as one that is likely to lead to multiplicity of suits, and when we can make a provision to the extent of twelve years, twelve months did not seem excessive. It is very difficult for anybody to say that six months is sacrosanct while twelve months is mischievous—in either case it is an arbitrary provision. Even with twelve months many may be debarred from instituting a suit. I have not, however, been able to

[Pandit Govind Ballabh Pant.]

understand one thing which the Hon'ble Finance Member said. He stated that he had not heard any complaints. I do not know what complaints could be made. Where people are debarred by law from seeking remedy—they simply have to trust to their fate and curse the law. They cannot approach anybody and make a complaint. A man loses lakhs and lakhs because he does not file a suit within time. So that did not appear to me to be a very strong argument. I know that this amendment could not possibly commend itself to the majority of the House here, but still I think it necessary to press it as I feel that it will be a right thing to do and have adhered to it from the outset.

Hon'ble Sir Sam O'Donnell: I have only this to add, that with regard to the complaints I agree that complaints might not be sent in to me. Still this particular provision has been under consideration for great many years, and district officers who are in close touch with the villages would certainly have come to know it if there were any serious complaints about this period of limitation. No such complaints have ever reached us, and therefore I can only assume that the tenants do not in practice find that the period of six months is too short.

Question that the words in serial No. 13 as originally reported stand part put and agreed to.

Mr. H. A. Lane: I move that serial No. 11 be deleted altogether and serials Nos. 12 to 22 be re-numbered 11 to 21, and that in the heading the Nos. 19, 20 and 21 be substituted for 20, 21 and 22.

Question that the above amendment be made put and agreed to.

Question that Group B stand part of the Bill put and agreed to

GROUP C.—Applications triable by Assistant Collector of the second class.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	81	For arrears of rent or ejectment in default.	Three years ..	When the arrears became due.	As in the Court Fees Act, 1870.
2	86	For the ejectment of non-occupancy tenant.	None ..	None ..	Eight annas.
3	105	For the service of a notice of surrender under section 103 or 104.	As in section 105	As in section 105	Nil.
4	138	For the deputation of an officer to make division, estimate or appraisal of produce or crops.	None ..	None ..	As in the Court Fees Act, 1870.
5	144	For permission to deposit rent.	Do. ..	Do. ..	One rupee.
6	150	For payment or refund of rent deposited under section 144.	Do. ..	Do. ..	As in the Court Fees Act, 1870.
7	159	For assistance to distrainer against resistance or apprehension of resistance.	Do. ..	Do. ..	Ditto.

Pandit Nanak Chand : I move that in column 4 of serial No. 1 "one year" be substituted for "three years".

Since a zamindar has got various methods of realizing rent, I think the provision of this section should apply for the realization of rent within one year. If arrears are allowed to be accumulated for three years it becomes difficult for the tenants to pay them off in one lump sum, and their inability to pay leads to their ejection. With that object I move this amendment. The arrears of rent due from tenants should not be allowed to accumulate and they should be recovered by filing a suit and getting a decree, or by any other process allowed by the Bill.

Hon'ble Sir Sam O'Donnell : I do not think that we need waste time by seriously discussing this particular amendment, because I am quite sure it is one that will not commend itself to the House. The result of it would be that a landlord would have to file a suit as soon as one year's rent became due. So that instead of one suit there would be three suits; litigation would increase, the cost to the tenants would be increased, and the interests of both parties would suffer.

Question that the original words in serial No. 1 stand part of the schedule put and agreed to.

Pandit Govind Ballabh Pant : I have an amendment to serial 1, No. 97.

Hon'ble the President : Notice of this was received at 4.21 p.m. yesterday. Is there any objection to this being moved?

Hon'ble Sir Sam O'Donnell : Yes, Sir.

Hon'ble the President : It cannot be moved.

Question that Group C stand part of the Bill put and agreed to.

GROUP D.—Applications triable by Assistant Collector in charge of the sub-division.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	17	For recording occupancy rights.	None ..	None ..	As in the Court Fees Act, 1870.
2	114	For permission to make an improvement.	Do. ..	Do. ..	Ditto.
3	115	Ditto ..	Do. ..	Do. ..	Ditto.
4	120(1) (a)	For establishment of right to make an improvement.	Do. ..	Do. ..	Ditto.
5	120(1) (b) & (c).	For settlement of dispute as to an improvement.	One year ..	The date of completion of the improvement.	Ditto

Hon'ble Sir Sam O'Donnell: I beg to move that at the beginning of the schedule the following be added:—

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	15(2) and (3)	For relinquishing expropriary rights	As in section 15	As in section 15	As in the Court Fees Act, 1870.

That subsequent serial numbers be re-numbered and that in the sixth column of the existing serial No. 1 for the words "As in the Court Fees Act, 1870," be substituted the words "Ditto."

Applications under sections 15(2) and (3) find no place in the schedule. The amendment is simple and no change of principle is involved.

Question, that this new serial be added, put and agreed to.

Question that the subsequent serials be re-numbered as 2, 3, 4, 5, and 6, put and agreed to.

Question that Group D, as amended, stand part of the schedule, put and agreed to.

GROUP E.

GROUP E.—Applications triable by Collector—Appeal to Board of Revenue.

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	39	To give effect to an exchange of land.	None ..	None	According to the amount of rent payable for the more highly rented of the two pieces of land exchanged.
2	40	To acquire land ..	Do. ..	Do.	According to the amount of rent payable for the land acquired.
3	40, proviso.	To recover possession of land acquired.	Six months	Expiry of two years from the date of acquisition, or the date of admission of another tenant or the use of land for any other purpose, as the case may be.	Ditto.
4	41	To acquire land ..	None ..	None	Ditto.

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court fees.
5	41 proviso.	To recover possession of land acquired.	Six months	Expiry of two years from the date of acquisition, or the date of admission of another tenant or the use of land for any other purpose, as the case may be.	According to the amount of rent payable for the land required.
6	42	To acquire land as str.	Two years	The commencement of this Act.	According to the amount of rent payable for the land acquired or if there is no rent fixed according to the valuation of the land at the rates specified in section 59(3) (b) or 4.

Hon'ble Sir Sam O'Donnell: I beg to move that in Group E of Fourth Schedule all the entries in respect of serial No. 6 be deleted.

The reasons for this amendment are consequential on the deletion by the Council of clause 42.

Question, that the entries in respect of serial No. 6 stand part of the schedule, put and negatived.

Question, that Group E, as amended, stand part of the schedule, put and agreed to.

GROUP F—Other applications.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1	4(e)	For declaration and demarcation of land as str.	None ..	None ..	As in the Court Fee Act, 1870.
2	60	For the ejectment of a tenant on the ground of an unsatisfied decree for arrears of rent.	Three years	The date of the final decree in the case.	Ditto.
3	..	For the execution of a money decree under this Act or under any enactment repealed by this Act, not being a decree for a sum of money exceeding Rs. 500, inclusive of the costs of executing such decree but exclusive of any interest which may have accrued after decree upon the sum decreed.	Ditto ..	Ditto ..	Ditto.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
4	..	For the execution of such a decree when exceeding Rs. 500.	The period allowed for the execution of a decree of the civil court.	As in the case of a decree of the civil court.	As in the Court Fees Act, 1870.
5	..	For the execution of any decree other than a money decree.	One year..	The date of the final decree in the case.	Ditto,
6	98	For an adjudication as to the price of crops or other products which the landholder has elected to purchase under section 97.	As in section 98.	As in section 98 ..	Ditto,
7	119	For permission to give compensation otherwise than by payment of money for an improvement made by a tenant.	As in section 119.	As in section 119 ..	Ditto,
8	124	For determination of rent after ejectment from part of holding.	Six months	The date of the decree or order for ejectment.	Ditto,
9	250 & 251	For a review of judgement	Ninety days	The date of the decree or order.	Ditto,
10	252	For revision ..	None ..	None	Ditto,

Pandit Nanak Chand : I beg to move that after serial No. 1 the following be added :—

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper court fees.
1(a)	78	For compensation for improvements.	Thirty days	From the date of the service of the notice of ejectment.	As in the Court Fees Act, 1870.

Clause 78 (1) provides that no decree or order for the ejectment of a tenant shall be passed or enforced until any claim duly made by him on account of improvements has been investigated, and the court has recorded a finding as to the amount of compensation (if any) payable to the tenant on that account. Generally when suits for ejectment are filed against the tenants, they raise no objection on the score of improvements, and they do not claim any compensation, but try to come to terms

with the zamindar, and sometimes it happens that in spite of their best efforts to meet the demands of the zamindar, they do not succeed. The result is that a decree for ejectment is passed against them, and after this they cannot claim any compensation for the improvements which they have made on the holding. It is, therefore, highly desirable that the amendment that I have moved should be made.

Khan Bahadur Shaikh Masud-uz-Zaman : I am afraid if this motion is carried it will contravene the provisions of clause 78 of the Bill. Under that clause a decree for ejectment can be passed only when a claim by the tenant on account of improvement has been investigated. Now, when the decree has been passed and everything is over, it will be very hard on the landlord if he is involved once again in the case. Moreover, the tenant can claim compensation at present without paying the court fees, but if the amendment is made, he will have to pay court-fees also. For these reasons I oppose the amendment.

Mr. R. Burn : This addition appears to me entirely unnecessary. Under clause 78 no court can enforce ejectment until a claim made on account of improvements has been settled. Clause 116 is also in point. The procedure in these cases is that when a tenant is being sued for ejectment, he makes his claim. If he is ejected, he is entitled to compensation for the improvements that he has made in his holding. Similarly, if an application is made to eject him on account of the arrears of rent, the tenant makes his counter-application. The honourable mover by his amendment suggests we should have a separate proceeding for that. Under section 47 of the Civil Procedure Code this is a question of execution and it ought to be decided along with the original case in which ejectment has been settled. There is no reason at all for any separate proceeding of this nature.

Pandit Nanak Chand : I have already pointed out in my remarks that very frequently the tenant at first tries his level best to satisfy the demands of the zamindar, viz., to pay the arrears of rent due to the zamindar. His primary concern is to make every effort to retain the holding in his possession. But when his efforts fail and he finds that he has been ejected and then he regrets that he did not claim compensation for his improvements he should be given an opportunity to file an application within 30 days, which is not a long period, to claim compensation.

Hon'ble Sir Sam O'Donnell : I have nothing to add to what has already been said.

Question, that the amendment be made, put and negatived.

Question, that group F stand part of the schedule, put and agreed to.

Question, that group G stand part of the schedule, put and agreed to.

Hon'ble the President : Having disposed of Schedule IV, we will now go back to Chapter XV.

CLAUSE 280.

230. Subject to the provisions of section 271, all suits and applications of the nature specified in the Fourth Schedule shall be heard and determined by the revenue courts.
- | | |
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| Suits and applications
cognizable by revenue
courts only. | applications of the nature specified in the
Fourth Schedule shall be heard and
determined by the revenue courts. |
|---|--|

Hon'ble Sir Sam O'Donnell : I move that the following be added to clause 230 :—

‘ And no court other than a revenue court shall, except by way of appeal or revision as provided in this Act take cognizance of any such suit or application, or of any suit or application based on a cause of action in respect of which adequate relief could be obtained by means of any such suit or application.

Explanation.—If the cause of action is one in respect of which adequate relief might be granted by the revenue court, it is immaterial that the relief asked from the civil courts may not be identical with that which the revenue court could have granted.”

This is a purely consequential amendment in view of the alterations made in the fourth schedule.

Question that the above amendment be made put and agreed to.

Question, that clause 230, as amended, stand part of the Bill, put and agreed to.

CLAUSES 231, 232 AND 233.

Question, that clauses 231, 232, and 233 stand part of the Bill, put and agreed to.

Hon'ble Sir Sam O'Donnell : In view of the changes made in the fourth schedule, there will be consequential amendments to clauses 234 to 261. In order, therefore, to examine what those amendments will be, I move that consideration of clauses 234 to 261 be postponed till tomorrow.

Question, that consideration of clauses 234 to 261 be postponed till tomorrow, put and agreed to.

CLAUSES 262 TO 264.

Question that clauses 262 to 264 stand part of the Bill, put and agreed to.

CLAUSE 265.

265. (1) The lambardar in an undivided mahal or in the common land of the mahal, thok or patti of which he is the Powers of lambardar. lambardar is entitled in the absence of any contract or usage to the contrary to collect rents and other dues.

(2) Wherever the lambardar is entitled under the provisions of subsection (1) to collect rents, he shall also be entitled to settle and eject tenants, to eject rent-free grantees, to enhance rents, and to do all acts incidental to the proper management of the estate with a view to the common benefit :

Provided that a lambardar shall not be entitled on behalf of other co-sharers without their written content to—

(a) grant a theka.

(b) sell or cut down trees or groves

Rai Sahib Lala Jagdish Prasad : I move that in the proviso add a new sub-clause (c) as follows :—

“(c) confer occupancy rights under section 17 of this Act.”

I think I need not say many words in support of this amendment. Clause 17 lays down, among other things, that a lambardar shall be competent to confer a right of occupancy with the written concurrence

of all the co-sharers whom he represents. Proviso to clause 265 is of a negative nature and lays down what a lambardar shall not be entitled to do on behalf of other co-sharers without their written consent. It is, I think, desirable that a sub-clause be added here prohibiting a lambardar from conferring occupancy rights without the written consent of other co-sharers.

Hon'ble Sir Sam O'Donnell: There is no harm in having this sub-clause inserted.

Question, that the above sub-clause be added, put and agreed to.

CLAUSE 265 (2).

Babu Nemi Saran: I beg to move that in clause 265 (2), proviso (a) after "theka" omit "full-stop" and insert "for more than five years."

In this connexion I would like to say that the lambardar sometimes finds himself in great difficulty in managing a property himself, and I know of cases in which the duties of a lambardar had been thrust upon a person against his will by the tahsildar. In cases where he is not in a position to collect profits himself, I think, he should be allowed to relieve himself of that duty and to give a theka on reasonable terms which can be questioned if it is collusive or unreasonable in any revenue court. I make this suggestion and leave it to the Hon'ble the Finance Member to look into it.

Hon'ble Sir Sam O'Donnell: I do not really see why the lambardar should be entitled, without the consent of the co-sharer to grant a theka. I think if he did grant a theka without the consent of the co-sharer it is extremely likely that there would be trouble in the village, may be a riot. I cannot see that this proposal is based on any principle.

Amendment by leave withdrawn.

Question, that clause 265 stand part of the Bill, put and agreed to.

Question, that clauses 266, 267, 268, 269, stand part of the Bill, put and agreed to.

CLAUSE 270

Procedure when tenant pleads opposite party is not his landholder. 270. (1) When in any suit brought under this Act—

- (a) by a landholder against a tenant for arrears of rent, or
- (b) by a tenant against a landholder to contest a distraint for arrears of rent,

the tenant pleads that he has paid the rent of the holding for the period in respect of which the suit is brought or the distraint made to a third person to whom he has in good faith been paying the rent of the holding up to the date of institution of the suit or the date of the distraint, the question of the payment of rent in good faith to such third person by the defendant shall be inquired into.

(2) If the question is determined in favour of the tenant, the suit shall be decided in his favour and he shall not be made party to any subsequent suit between the landholder and the third person for the recovery of the amount so paid or for the determination of the proprietary right in the holding.

Hon'ble Sir Sam O'Donnell: I move that in line 6 the word "tenant" be substituted for the word "defendant."

Question, that the word "defendant" stand part of the clause put and negatived.

Question, that the word "tenant" be inserted there, put and agreed to.

Babu Jai Narayan Chaudhri: I beg to move that in clause 270, sub-clause (1) (b), line 7, between the words 'distrain' and "the question. etc." insert the words "such person shall at the cost of the plaintiff be made a defendant in the suit, and."

The present clause as it stands contemplates that the question of payment to such third person should be inquired into and decided in the absence of that person. The consequence of which is that such third person shall have no occasion to say "no" to the fact of payment alleged by the tenant while on the basis of these proceedings he can be dragged into court on the suit of a zamindar for the recovery of money from him. I am opposed to this, firstly, because it is contrary to the principles of justice, equity and good conscience that a matter should be decided in the absence of the person concerned.

(The Deputy President took the Chair).

The framers of the Bill can say that any decision arrived at in the former proceedings would not be binding on that third person. It will be still open to him to contest the fact of payment in subsequent proceedings when the suit is brought for the recovery of money against him. Admitted—That is still the more reason why he should be brought on record so that the matter may be decided all at once leaving no room for that man to deny the fact of payment. If that man is not made a party to the former proceedings, then sometimes serious consequences can arise. Suppose a suit is brought by a zamindar for arrears of rent against a tenant. The tenant says that he had been paying rent to such a third person and he has paid rent to him as usual. It is not in the personal knowledge of the zamindar whether that payment has been made to a third person or not; so the zamindar is not in a position to say that the payment has not been made and the tenant can successfully prove that he made payment to the third person. In that case the suit will be dismissed so far as the tenant is concerned. Then say, he brings another suit against that third person for the recovery of his dues; and that third person comes forward and says that no payment was made to him—the zamindar is not in a position to say otherwise as he does not know when and how and before whom the money was paid. So in most cases, the zamindar cannot be able to successfully prove that the payment was made to such third person while the third person can easily disprove the payment to him. Thus, the subsequent suit will also be dismissed against the third person and the zamindar will have lost his dues. He could not recover from the tenant, he could not recover from the third person and was saddled with costs in bargain.

One could say that that third person could have been produced as a witness in the first proceedings and an admission could have been obtained of payment to him. But those who are acquainted with the mysteries of courts can say that there are a hundred-and-one ways of

avoiding the service of summons on one's person to attend a court as a witness, and specially if the tenant and the third person are in collusion, this can easily be done to cause loss to the zamindar.

The zamindar cannot again sue the tenant because the former proceedings stand in his way as a bar by the rule of *res judicata*.

In the circumstances it is necessary, that the third person be made a party to the former proceedings and that would be the proper occasion to decide the question of payment when the payer and the payee are both before the court and both are in a position to prove or disprove the fact of payment. My second reason is that if you do not make the other man a party to the former proceedings then the court shall have to record the evidence of the fact of payment twice, once in the former proceedings and again in the subsequent proceedings; the parties shall have to summon witnesses twice to prove the fact of payment or non-payment. The witnesses shall have to attend the court twice for the same evidence on the fact of payment or non-payment. For these reasons I propose that the third person should be made a party to the former proceedings when the fact of payment is alleged by the tenant. I hope the House will take this into consideration and will pass the amendment proposed by me.

Mr. R. Burn : I am afraid that the amendment which has been proposed would add a great deal to the troubles of tenants. The object of section 198 of the present Act is to keep the tenant out of disputes between the zamindar and other claimants. The old Act of 1881, I remember very well, used to press very hardly on the tenants in this respect. There was a dispute between two zamindars and one of them filed a suit or made a distraint on the tenant and under that old Act the tenant had to show that the rival zamindar to whom he paid, took the rent in good faith. That worked very badly. The present provision of law is that if the tenant can show that he has made payment in good faith then he is discharged from the liability of rent and his crops are not liable to distraint. It is then for the other claimants to fight out the case themselves in the civil court. The honourable mover has suggested that the third person should be made a defendant in the suit at the cost of the tenant.

Babu Jai Narayan Chaudhri : No, at the cost of the plaintiff.

Mr. R. Burn : I would refer the honourable member to sub-clause (1) (b) which relates to suits by a tenant against a landholder to contest a distraint for arrears of rent. The tenant is the plaintiff. The Civil Procedure Code gives to the court full power to award costs and it is certainly not fair that the tenant should be saddled with costs simply because he has raised a plea like this. It is surely for the court after hearing the parties to arrive at a decision on the case and to decide who should pay the costs. This amendment, if it were carried, would make it practically impossible for a tenant to take any advantage at all of the provisions of clause 271, and in effect the tenant would have to give security for costs before the third person is made a party. For these reasons I think that the amendment should not be adopted.

Khan Bahadur Shaikh Masud-uz-Zaman : I think this amendment is a very reasonable one for several reasons. In the first place we are living not in mediæval ages when false evidence was as difficult as it is

[Khan Bahadur Shaikh Masud-uz-Zaman.]

easy today. The question always is of *bona fides*, and if the tenant deliberately pays the rent to a lambardar whom he knows not to be the proper person to realize it and he pleads in the court that he has paid him *bona fide* because he was one of the lambardars of the village, it will be always very difficult for the landholder or the right person to prove that he did not act *bona fide*, in the first place, and in the second place, when he is out of court and is no longer a party to the suit, it will be absolutely impossible for the plaintiff to prove the claim against the third person.

If all the three persons are made parties in the case, I do not see why the plaintiff should be saddled with further costs. It is very curious. This clause in the Bill will really increase litigation and separate suits will have to be fought out. The amendment simply means that in one and the same case the whole matter may be decided. For this reason I think that the amendment is very reasonable and that there will be no difficulty in its acceptance by the House.

Hon'ble Sir Sam O'Donnell: I think the honourable member who has just spoken has misunderstood the position. In the first place, if the tenant deliberately pays rent to a person who is not entitled to receive it, then he gets no relief at all. It is not suggested by anybody that, if he has paid in good faith to a third person the rent of his holding, in such cases the tenant should not get relief. The whole point is whether the person to whom he has paid is to be made a party to the suit at the cost of the plaintiff. The object of this provision in the Bill is to save the tenant from being involved in a case with which he has no concern. If a question of proprietary title is raised, the tenant is not concerned with that question. What he has to do is to establish that he has paid the rent in good faith to another person. If he does that, he is absolved from liability. The question of proprietary right is one which is to be settled between the rival claimants. The objection to this clause is that it makes the tenant a party to an issue with which he has really no concern whatever.

Babu Jai Narayan Chaudhri: As I have already pointed out that the fact of payment is such that it is either in the knowledge of the tenant who has paid or in the knowledge of the person to whom the payment has been made, the zamindar, who has brought a suit for arrears of rent, cannot know whether the payment was or was not made to the third person. He is therefore not in a position to prove or disprove that fact. That can be done either by the tenant or by the third person to whom the payment has been made. So unless these two persons are present in court, it cannot be proved by any true and reliable evidence whether the payment has been made or not. If the tenant makes an allegation that he has paid the rent to a third person in good faith and if that third person is not brought before the court, the zamindar, who does not know whether the payment has been made or not, is not in a position to say one way or the other from his personal knowledge; he is not in a position to produce those witnesses before whom the payment was made; he shall have to manufacture evidence which this clause will compel him to do if he wants to prove or disprove the payment. If that fact is once decided in the absence of the third person, that is to say, if it has been decided that the pay-

ment was made to him, it will even then be open to that person in a subsequent proceeding to deny the payment, and more often than not he can be successful in proving that no payment was made to him. Suppose the court comes to the conclusion that no payment was made to the third person, no relief will be given to zamindar against the third person. The zamindar will thus lose his rent altogether.

Then, Sir, it was questioned by the Senior Member of the Board of Revenue why a tenant should always be saddled with the cost of the third person being made a defendant in suit. I say that it is not so. The whole clause reads as follows :—

“ 270. (1) When in any suit brought under this Act.—

(a) by a landholder against a tenant for arrears of rent; or

(b) by a tenant against a landholder to contest a distraint for arrears of rent, the tenant pleads that he has paid the rent of the holding for the period in respect of which the suit is brought or the distraint made to a third person to whom he has in good faith been paying the rent of the holding up to the date of institution of the suit or the date of the distraint, the question of the payment of rent in good faith to such third person by the tenant shall be inquired into.”

Here there are two kinds of suits. In one suit the zamindar will be the plaintiff in another which is contemplated by sub-clause (b) the tenant will be the plaintiff. So the subsequent clause will apply to both. In one case the third person is to be made defendant at the cost of the zamindar. In another at the cost of the tenant. It is not only the tenant who will always be saddled with costs. Even were it so, it would not have been improper. It is the interest of the tenant to successfully prove that he made payment to such third person in good faith, which will relieve him of all liability and entitle him to get his costs.

For this reason I would request the Council to take the matter into consideration seriously, because if that third party is not brought on record, then this clause will be acting against the principles of justice, equity, and good conscience and also in certain cases serious miscarriage of justice is likely to happen.

Hon'ble Sir Sam. O'Donnell : In the first place I have to point out that the burden of proof lies on the tenant. It is not for the landlord when he is plaintiff to prove that the tenant has not paid money to a third person. It is for the tenant to prove that he has paid rent in good faith to a third person and of course usually in order to prove that he has to summon the third person or the agent of the third person to court as a witness.

Further, why should the costs necessarily fall on the plaintiff? In one class of cases the plaintiff will be the landlord, in the other class of cases the plaintiff will be the tenant. Why should the costs necessarily fall always on the plaintiff? Surely the question of costs is one to be decided by the court according to the merits of each case. It is contrary to all principles in a matter of this kind that the costs should automatically fall on one party. In one case it will fall upon the landlord who is suing for the rent and in the other case on the tenant who is contesting a distraint.

Question put, that in sub-clause (1) (b) of clause 270, the words “such person shall at the cost of the plaintiff be made a defendant in the suit, and” be inserted between the words “distrain” and the question, etc.”

The House divided : Ayes, 26 ; Noes, 25.

Ayes.

Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Amba Prasad Sahib.
Raja Suryapal Singh.
Rao Sahib Kunwar Sardar Singh.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.

Bhaya Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hameed Khan.
Nawabsada Muhammad E'jaz Ali Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Dr. Zia-ud-din Ahmad.
Khan Bahadur Sheikh Masud-uz-Zaman.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Munshi Siddiq Ahmad.
Rai Bahadur Lal Mathura Prasad Mehrotra.
Dr. Ganesh Prasad.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.

Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Babu Khem Chand.
Babu Narayan Prasad Arora.
Rai Bahadur Babu Ram Nath Bhargava.
Khan Bahadur Mr. Ashiq Husain Mirza.
Qazi Habib Ashraf.

CLAUSE 270 (2).

Babu Jai Narayan Chaudhri : I beg to move that sub-clause (2) of clause 270 be deleted and the following sub-clause be substituted in its place :—

" If the payment in good faith to such third person is proved, the tenant shall be relieved of his liability to the landholder to the extent of the amount so paid, but between the landholder and the third person as plaintiff and defendant the court shall try in the same proceedings the claim for recovery of the said amount, as if the suit was originally filed against such third person for the same object."

My object in moving this amendment is that, once the court has come to the conclusion that the payment has in good faith been made to a third person, why that matter should not be decided then and there between such third person and the zamindar; Why should not the amount which had been found to have been paid to such third person be decreed against him and the case be decided in favour of the zamindar to that extent? As soon as it is found that the payment has been made in good faith, the tenant should be relieved of all his liability to the zamindar; but the proceedings should not end there; and in order to achieve the object which could have been achieved by bringing a fresh suit against the third person, the case should be tried then and there and a decree passed against such third person for that amount. This will avoid multiplicity of proceedings and bring about speedy recovery of rent which was due to the zamindar. With these words I request the House to take the matter into consideration and accept the amendment as proposed by me.

Hon'ble Sir Sam O'Donnell: This is a most extraordinary amendment. The effect of this amendment is that revenue courts will decide the question of proprietary title. I cannot understand how the honourable member who moved this amendment came to imagine that it was an appropriate amendment? I think we have all agreed throughout that the question of proprietary title must be settled in the civil court, and now we have an amendment put in by the honourable member in which he asks the revenue courts to decide the question of proprietary title. It is obvious that the Council should not accept this amendment.

Babu Jai Narayan Chaudhri: It is not as has been pointed out by the Hon'ble the Finance Member. We see here in this Bill that a provision has been made in respect of certain other sections that when the question of proprietary right is raised, then the revenue court shall frame an issue on that point and send it to the civil court for decision and according to the decision of the civil court the revenue court shall decide the point. Here if you accept this amendment, then in clause 271 sub-clause (1) (c) you shall have to add only one section more, i.e., 270 as a consequential amendment. The sub-clause will then read :—(c) "in any suit under section 121 or 270 a dispute as to the proprietary right in the land in suit is raised." Then the question of proprietary right will not be decided by the revenue court but by the civil court, in the same way as the question of proprietary right is to be decided by a civil court in other cases mentioned in section 271. So there will be no miscarriage of justice and no serious difficulty, because the question of proprietary title can be decided by the civil court. Issues can be framed by the revenue court and sent to the civil court if such a case gives rise to a question of proprietary title.

Hon'ble Sir Sam O'Donnell: The honourable member began by saying that the question of proprietary title would not, if his amendment was adopted, be decided by the revenue court. He began by saying that. Then he bethought himself and looked at the Bill and suddenly discovered that it would be decided by a revenue court. He then said, we can go on and amend other sections of the Act so as to alter the position. But we cannot consider other clauses at present. At the present moment we are concerned with the clause in front of us and taking it as it stands, it is quite clear that the question of proprietary title would in effect, if this amendment were adopted, be decided by the revenue court. The Council will agree with me that question of title should not be decided by a revenue court. I am sure all the members of the legal profession will agree with me that that is quite wrong.

Question, that sub-clause (2) as reported by the Select Committee, stand part of the Bill, put and agreed to

Question, that clause 270, as amended, stand part of the Bill, put and agreed to.

CLAUSES 271, 272 AND 273.

Question, that clauses 271, 272, and 273 stand part of the Bill, put and agreed to.

CLAUSE 274.

274. The local Government may, after previous publication, make

Power of local Government to make rules. rules consistent with this Act—

- (a) for the guidance of officers under section 74;
- (b) as to the fees payable under this Act;

- (c) as to the time of the year for execution of decrees for ejectment in any local area;
- (d) as to the attestation of leases counterparts and agreements under section 127;
- (e) as to the dates on which profits shall be divisible; and
- (f) generally for giving effect to the provision of this Act.

Hon'ble Sir Sam O'Donnell: I beg to move a consequential amendment, i.e., that sub-clause (a) be deleted and the other sub clauses be re-lettered. This is consequential on the deletion by Council of clause 74.

Question, that sub clause (a) be deleted and the other sub-clauses be re-lettered, out and agreed to.

Pandit Govind Ballabh Pant: I want to move, Sir that. . .

The Deputy President: That should come after 274.

Pandit Govind Ballabh Pant: I wanted to move it as clause (g) in this clause.

The Deputy President: In that case you may move it now.

Pandit Govind Ballabh Pant: I beg to move that the following be inserted as a new sub-clause (f), the present sub-clause (f) being re-numbered as (g):—

“As to the publication and cancellation of notifications under clause 19, sub-clause (h) to the proviso, subject to the following conditions:—

Hon'ble Sir Sam O'Donnell: It appears to me that this amendment is inconsistent with clause 19 which Council has already passed. Clause 19, sub-clause (h) gives the local Government power to notify land as tea-gardens. This amendment, as I understand, it would limit that power. It seems to me that an amendment of that character ought to have, been moved as an amendment to clause 19. It cannot be brought here at the end. Clause 19 definitely gives a certain power to the local Government. If it is desired to limit that power, there should have been an amendment to clause 19—not an amendment after we have gone 200 clauses further on—

Pandit Govind Ballabh Pant: I submit that the sub-clauses in clause 274 certainly refer to some other part of this Bill, and my amendment too refers to one of the sub-clauses which finds place in some provisions of this Bill. If you will be pleased to look at sub-clause (e), it says “as to the dates on which profits shall be divisible”. Well, profits would be divisible on any dates if there were no provision like this, but the local Government by notifying these dates would in a way be restricting the unlimited right of the co-sharers to divide profits on any days they like. I do not in any way prevent the local Government from issuing notifications. The only thing provided in clause 19 (g) was that the local Government would be empowered to notify certain lands as tea-lands. I am only saying what are the conditions under which these notifications will be issued, or I am simply regulating the procedure for such notifications.

Hon'ble Sir Sam O'Donnell: May I point out that that is not the effect of the amendment. There is no objection to the part referring to the publication and cancellation, etc. But when the amendment goes on to say, “subject to the following conditions,” that “the area

notified under the said sub-clause in any mahal shall not be more than double the area under tea at the commencement of this Act," etc. How can that be said to be consistent with the power given in clause 19 to the local Government? It clearly limits and contradicts the power given earlier in the Bill.

The Deputy President: I really think that, unless the honourable member is prepared to adopt the suggestion of the Hon'ble the Finance Member, it must be said that the place for this amendment was when clause 19 was under discussion, it is open to him to move the amendment excepting sub-clauses (a), (b), and (c).

Pandit Govind Ballabh Pant: Very well, Sir, I will move it like that. Half a loaf is better than none. I move that the following be inserted as sub-clause (f), the present sub-clause (f) being re-numbered as (g): "As to the publication and cancellation of notifications under clause 19, sub-clause (h), to the proviso."

The local Government has been given the power of issuing notifications under that sub-clause. It can notify any land under that as tea-land. The Council has not given any directions as to when, how or under what conditions such notifications are to issue. I wanted to give the Government the authority in a more precise and definite manner, but they want to have a wider latitude which of course carries greater responsibility. But in order to safeguard the interests of the parties concerned I propose this amendment which, if adopted, will empower them to issue such notifications only after they have made rules and these rules have been previously published. It will give an opportunity to both parties to place their views on the rules on which Government intends to proceed in these matters. So I propose this addition.

Hon'ble Sir Sam O'Donnell: I have no objection to this.

Pandit Govind Ballabh Pant: I have nothing more to say. It has been mutilated altogether.

Question, that this amendment be made, put and agreed to.

Question, that clause 274, as amended, stand part of the Bill, put and agreed to.

CLAUSE 275.

Question, that clause 275, stand part of the Bill, put and agreed to.

The Council was then adjourned to the following day.

APPENDIX A.

(See page 849 *supra*.)

*Lists referred to in the answer to starred question No. 35 asked by
PANDIT NANA CHAND SAHIB on July 27, 1926.*

List of members of the Text-book Committee, United Provinces.

1. Mr. A. H. Mackenzie, M.A., B.Sc., Director of Public Instruction, United Provinces (President).
2. Mr. Raghunath Das, B.A., C.T., Registrar, Departmental Examinations, United Provinces (Secretary).
3. Deputy Director of Public Instruction, United Provinces.
4. Miss H. G. Stuart, M.A., Chief Inspector of Girls' Schools, United Provinces.
5. Pandit Ram Narayan Misra, B.A., Headmaster, Central Hindu High School, Benares.
6. Babu Ganga Prasad, M.A., C.T., Headmaster, D. A.-V. High School, Allahabad.
7. Lala Diwan Chand, M.A., Principal, D. A.-V. College, Cawnpore.
8. Mr. Sanjiva Rao, M.A., Principal, Queen's Intermediate College, Benares.
9. Mr. N. A. Rust, M.A., Inspector of Schools, Lucknow division.
10. Mr. Abul Hasan, B.A., Inspector of Schools, Gorakhpur division, Gorakhpur (at present officiating Assistant Director of Public Instruction, United Provinces).
11. Mr. Kalka Prasad, B.A., Assistant Inspector of Schools, Agra division, Agra.
12. The Principal, Government Intermediate College, Allahabad.
13. Mr. Mir Mehdi Hussain, M.A., L.T., Head Master, Shuaib Muhammadia High School, Agra.
14. Mrs. Jwala Prasad, Shahjahanpur.
15. Pandit Bhagwat Narayan Bhargava, B.A., M.L.C., Jhansi.
16. Rai Bahadur Thakur Mashal Singh, M.L.C., Hardoi.
17. Mr. Masud-ul-Hasan, Bar.-at-Law, Moradabad.
18. Rev. Dr. J. R. Chitambar, M.A., D.D., Principal, Reid Christian College, Lucknow.
19. Khan Bahadur Hafiz Hidayat Hussain, B.A., M.L.C., Bar.-at-Law, Cawnpore.
20. Mr. Mukandi Lal, B.A., M.L.C., Bar.-at-Law, Dehra Dun.
21. Rai Bahadur Thakur Hanuman Singh, M.L.C., 12, Olyde Road, Lucknow.
22. Lala Sita Ram, B.A., retired Deputy Collector, 203, Mutthiganj, Allahabad.
23. Khan Bahadur M. Mohd. Fasih-ud-din, M.L.C., Badaun.

Sub-committee "A"—(All subjects for preparatory and primary sections.)

1. Deputy Director of Public Instruction, United Provinces (Chairman).
2. Pandit Bhagwat Narayan Bhargava Sahib, B.A., M.L.C., Chairman, District Board, Jhansi.
3. Mr. Mir Mehdi Hussain, M.A., L.T., Headmaster, Shuaib Muhammadia High School, Agra.
4. Mr. Masud-ul-Hasan, Bar.-at-Law, Chairman, Municipal Board, Moradabad.
5. Mr. Abul Hasan, B.A., Inspector of Schools, Jhansi division, Jhansi.
6. Miss H. G. Stuart, M.A., Inspector of Girls' Schools, United Provinces, Allahabad.
7. Pandit Ram Narayan Misra Sahib, B.A., Headmaster, Central Hindu High School, Benares City.
8. Mr. Kalka Prasad, B.A., Assistant Inspector of Schools, Agra division, Agra.
9. Secretary, Text-book Committee, United Provinces

Sub-committee "B"—(English).

1. Mr. N. A. Rust, M.A., Inspector of Schools, Lucknow division, Lucknow (Chairman)

2. Rev. Dr. J. R. Chitambar, M.A., D.D., Principal, Reid Christian College, Lucknow.
3. Babu Ganga Prasad Sahib, M.A., C.T., Headmaster, Dayanand Anglo-Vernacular High School, Allahabad.
4. Mrs. Jwala Prasad, Shahjahanpur.
5. Mr. A. A. Simpson, M.A., Principal, Training College, Allahabad.
6. Secretary, Text-book Committee, United Provinces.

Sub-committee "O" (History, Geography, and Economics).

1. Mr. Mukandi Lal, B.A., M.L.C., Bar-at-Law, Dehra Dun (Chairman).
2. Khan Bahadur M. Mohd. Fasih-ud-din Sahib, M.L.C., Budaun.
3. Mr. W. E. Andrews, M.A., Principal, La Martinière College, Lucknow.
4. Babu Kaushal Kishor Sahib, B.A., L.T., Lecturer, Training College, Allahabad.
5. Mr. C. D. Thompson, M.A., Professor of Economics, Ewing Christian College, Allahabad.
6. Secretary, Text-book Committee, United Provinces.

Sub-committee "D" (Mathematics, Sciences, and Technical subjects).

1. Mr. W. G. P. Wall, M.Sc., Principal, Government Intermediate College, Allahabad, (Chairman).
2. Mr. Abul Hasan, B.A., Inspector of Schools, Jhansi division, Jhansi.
3. Mr. E. H. Moody, M.A., Officiating Deputy Director of Public Instruction, Allahabad.
4. Babu Devi Prasad Khateri Sahib, B.A., L.T., Headmaster, Prithinath's High School, Cawnpore.
5. Mr. Gopal Swarup Bhargava, M.Sc., Kayasth Pathshala Intermediate College, Allahabad.
6. Secretary, Text-book Committee, United Provinces.

Sub-committee "E" (Urdu, Persian, and Arabic).

1. Mr. Abul Hasan, B.A., Inspector of Schools, Jhansi division, Jhansi (Chairman).
2. Masud-ul-Hasan, Bar-at-Law, Chairman, Municipal Board, Moradabad.
3. Mr. Mir Mehdi Husain, M.A., L.T., Headmaster, Shuaib Muhammadia High School, Agra.
4. Mr. Manohar Lal Zutshi, M.A., Principal, Government Jubilee Intermediate College, Lucknow.
5. Babu Ganeshi Lal Sahib, B.A., M.F., Lecturer, Kayasth Pathshala Intermediate College, Allahabad.
6. Secretary, Text-book Committee, United Provinces.

Sub-committee "F" (Hindi and Sanskrit).

1. Lala Sita Ram Sahib, B.A., retired Deputy Collector, Allahabad (Chairman).
2. Pandit Bhagwa Narayan Bhargava Sahib, B.A., M.L.C., Chairman, District Board, Jhansi.
3. Pandit Ram Narayan Misra Sahib, B.A., Headmaster, Central Hindu High School, Benares city.
4. Babu Ganga Prasad Sahib, M.A., C.T., Headmaster, D. A. V. High School, Allahabad.
5. Mr. Mukandi Lal, B.A., M.L.C., Bar-at-Law, Dehra Dun.
6. Secretary, Text-book Committee, United Provinces.

Sub-committee "G" (Miscellaneous).

1. Mr. W. G. P. Wall, M.Sc., Principal, Government Intermediate College, Allahabad (Chairman).
2. Mrs. Jwala Prasad, Shahjahanpur.
3. Miss. H. G. Stuart, M.A., Chief Inspectress of Girls' Schools, United Provinces, Allahabad.
4. Khan Bahadur M. Mohd. Fasih-ud-din Sahib, M.L.C., Budaun.

5. Mr. A. A. Simpson, M.A., Principal, Training College, Allahabad
6. Secretary, Text-book Committee, United Provinces.

Sub-committee formed to select books for the libraries of Vernacular Middle Schools.

1. Deputy Director of Public Instruction, United Provinces (Chairman).
2. Mrs. Jwala Prasad, Shahjahanpur.
3. Miss H. G. Stuart, M.A., Chief Inspectress of Girls' Schools, United Provinces, Allahabad.
4. Pandit Bhagwat Narayan Bhargava Sahib, B.A., M.L.C., Chairman, District Board, Jhansi.
5. Lala Sita Ram Sahib, B.A., retired Deputy Collector, Allahabad.
6. Mr. Mukandi Lal, B.A., M.L.C., Bar-at-Law, Dehra Dun.
7. Mr. Masud-ul-Hasan, Bar-at-Law, Chairman, Municipal Board, Moradabad.
8. Mr. Abul Hasan, B.A., Inspector of Schools, Jhansi division, Jhansi.
9. Babu Ganeshi Lal Sahib, B.A., M.F., Lecturer, Kayasth Pathshala Intermediate College, Allahabad.
10. Secretary, Text-book Committee, United Provinces.

APPENDIX B.

(See page 849 supra).

*List referred to in the answer to starred question No. 36 asked by KHAN
RAHADUR HAFIZ HIDAYAT HUSAIN SAHIB on July 27, 1926.*

LIST OF WEAVING SCHOOLS.**Government Weaving Schools.**

1. The Central Weaving Institute, Benares.
2. The Textile School, Cawnpore.
3. Model Weaving Schools at Shahjahanpur, Sandila, Mau, Najibabad, Saharanpur, Almora and Bulandshahr.

Aided Weaving Schools.

Bara Banki, Muzaffarnagar, Budaun, Aligarh, Partabgarh, Badha (Meerut), Kara and Mau Aima, Allahabad, Orai and Kalpi, Jalaun, Gorakhpur, Hamirpur, Mainpuri, Meerut, Cawnpore, Dewas (Partabgarh), Sambhal, Moradabad, Aonla, Bareilly, Bareilly city, one in Muttra district, Muttra city, Unao, Agra city, Rae Bareilly, Sikandrabad, Bulandshahr, and Shahpur, (Shahjahanpur).

APPENDIX C.

(See page 850 *supra*).

*List referred to in the answer to starred question No. 39 asked by KHAN
BAHADUR HAFIZ HIDAYAT HUSAIN SAHIB on July 27, 1926.*

**CLASSIFIED LIST OF AGRICULTURAL FARMS UNDER THE
DEPARTMENT OF AGRICULTURE, UNITED PROVINCES,**

Instruction and Research Farms.

1. Instructional Farm, Agricultural College, Cawnpore.
2. Botanical Farm, Cawnpore.
3. Cotton Research Farm, Raya, district Muttra.
4. Potato Research Farm, Farrukhabad.

Experimental Farms.

1. Aligarh.
2. Muzaffarnagar.
3. Shahjahanpur.
4. Cawnpore.
5. Partabgarh.
6. Gorakhpur.

Seed and Demonstration Farms.

- | | | | | |
|---------------|----|----|----|---------------------|
| 1. Kalai | .. | .. | .. | district Aligarh. |
| 2. Bichpuri | .. | .. | .. | „ Agra. |
| 3. Jachonda | .. | .. | .. | „ Muttra. |
| 4. Nawabganj | .. | .. | .. | „ Bareilly. |
| 5. Nagina | .. | .. | .. | „ Bijnor. |
| 6. Jeolikote | .. | .. | .. | „ Naini Tal. |
| 7. Kalyanpur | .. | .. | .. | „ Cawnpore. |
| 8. Atarra | .. | .. | .. | „ Banda. |
| 9. Mainpuri. | | | | |
| 10. Etawah. | | | | |
| 11. Hardoi. | | | | |
| 12. Naugawan | .. | .. | .. | district Sultanpur. |
| 13. Fyzabad. | | | | |
| 14. Benares. | | | | |
| 15. Bahraich. | | | | |

Demonstration Plots.

1. Bulandshahr.
2. Bola Tal, district Hamirpur .. (Transferred to District Board, Hamirpur for two years).
3. Rae Bareilly.
4. Kesarwa district Budaun.

APPENDIX D.

*(See page 852 supra).**(Statement referred to in answer to starred question No. 50 for July 27, 1926, showing the number of persons taken by wolves in the districts of Pilibhit and Bareilly during 1926).*

Police station	Bilsanda,	district Pilibhit	..	..	6
Ditto	Bisalpur,	ditto	..	..	28
Ditto	Barkhera,	ditto	..	..	13
Ditto	Pilibhit,	ditto	..	..	2
Ditto	Jahanabad,	ditto	..	..	4
Total					43
Police station	Nawabganj,	district Bareilly	..	..	17
Ditto	Hafzganj,	ditto	..	..	16
Ditto	Bhuta,	ditto	..	..	11
Ditto	Baradari,	ditto	..	..	2
Ditto	Faridpur,	ditto	..	..	1
Total					47

APPENDIX E.

(See page 854 *supra*).

*Statement referred to in answer to unstarred question No. 2 of
July 27, 1926.*

	High school examination.*						Intermediate education.					
	1923-24.		1924-25.		1925-26.		1923-24.		1924-25.		1925-26.	
	Number of candidates.	Percentage of passes.	Number of candidates.	Percentage of passes.	Number of candidates.	Percentage of passes.	Number of candidates.	Percentage of passes.	Number of candidates.	Percentage of passes.	Number of candidates.	Percentage of passes.
Benares Hindu University.	121	51	122	42·6	190	48·8	8	57·5	..	..	3	66·66
Aligarh Muslim University.	396	48·4	436	56·6	687	†..	270	56·6	236	49·5	399	†..
Board of High School and Intermediate Education.	118	22	222	42·8	272	27·5	154	33·7	173	23·1	256	30·8

* High School examinations of the Aligarh Muslim University and Board of High School and Intermediate Education and Admission examination of the Benares Hindu University.

† Results not yet out.

APPENDIX F.

(See page 855 *supra*.)

Statement referred to in the answer to unstarred question No. 6 asked by PANDIT NANAK CHAND SAHIB on July 27, 1926.

Statement showing the number and percentage of schools inspected by various Inspectresses in the United Provinces during the years 1923-24, 1924-25 and 1925-26.

Year.	Name of the Inspectress.					Number of schools inspected.	Percentage of schools inspected.
1923 1924	Inspectress of Girls' Schools, I Circle ..					54	40.2
	Ditto	ditto	II	"	..	69	46.9
	Ditto	ditto	III	"	..	56	49.6
	Ditto	ditto	IV	"	..	84	54.5
	Ditto	ditto	V	"	..	64	44.7
	Ditto	ditto	VI	"	..	62	39.9
	Ditto	ditto	VII	"	..	58	25.7
	Ditto	ditto	VIII	"	..	48	26.09
	Ditto	ditto	IX	"	..	92	38.1
1924 1925	Inspectress of Girls' Schools, I Circle ..					42	35.5
	Ditto	ditto	II	"	..	44	29.8
	Ditto	ditto	III	"	..	36	34.6
	Ditto	ditto	IV	"	..	64	41.5
	Ditto	ditto	V	"	..	78	48.6
	Ditto	ditto	VI	"	..	41	18.06
	Ditto	ditto	VII	"	..	93	39.4
	Ditto	ditto	VIII	"	..	38	30.1
	Ditto	ditto	IX	"	..	89	34.8
1925 1926	Inspectress of Girls' Schools, I Circle ..					63	50.8
	Ditto	ditto	II	"	..	80	54.7
	Ditto	ditto	III	"	..	35	31.8
	Ditto	ditto	IV	"	..	62	39.7
	Ditto	ditto	V	"	..	74	49.6
	Ditto	ditto	VI	"	..	56	23.8
	Ditto	ditto	VII	"	..	93	41.8
	Ditto	ditto	VIII	"	..	65	48.8
	Ditto	ditto	IX	"	..	91	30.1

APPENDIX G.

(See page 855 *supra*).

Statement referred to in the answer to unstarred question No. 7 asked by PANDIT NANAK CHAND SAHIB on July 27, 1926.

Statement showing the places where Circle Inspectresses are occupying office buildings as their residences and the amount of rent paid by each.

No.	Place where Circle Inspectresses are occupying office buildings as their residence.	Amount of rent paid by each Inspectress for the portion occupied as her residence.
		Rs. a. p.
1	Moradabad	85 0 0 per mensem.
2	Meerut	35 0 0 ditto.
3	Shahjahanpur	30 0 0 ditto.
4	Agra	84 8 0 ditto.
5	Bareilly	Under consideration.
		Rs. a. p.
6	Cawnpore	50 0 0 per mensem.
7	Allahabad	45 4 0 ditto.
8	Lucknow	Under consideration.
		Rs. a. p.
9	Gorakhpur	15 0 0 per mensem.

APPENDICES.
APPENDIX H.

919

(See page 855 *supra*.)

*Statement referred to in answer to unstarred question No. 10 of
July 27, 1926.*

<i>Year.</i>					<i>Hindus</i>	<i>Muslims.</i>
1921	..	..	..	..	10	10
1922	..	..	..	..	7	5
1923	..	..	..	..	4	3
1924	..	..	..	..	4	4
1925	..	..	..	..	4	4
1926	..	..	..	..	Nil	Nil

No Christians have been promoted.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

—
Wednesday July 28, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m.
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(80)

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott, Bart.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. B. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saxena.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar.
Thakur Manjit Singh Rathor.
Rai Sahib Lala Jagdish Prasad.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.
Lala Babu Lal.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Kharagjit Misra.
Raja Suryapal Singh.
Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.

Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Jhanni Lal Pande.
Lieut. Raja Durga Narayan Singh.
Raja Narayan Pratap Singh.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyaya.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan
Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh
Pandit Govind Ballabh Pant.
Pandit Har Govind Pant.
Babu Ram Chandra Sinha.
Babu Sita Ram.
Khan Bahadur Mr. Muhammad Aslam
Saifi.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Nawabzada Muhammad Ejaz Ali Khan.
Khan Bahadur Chaudhri Amir Hasan
Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman
Khan
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaik Masud-us-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq
Husain
Khan Bahadur Maulvi Muhammad Fasil-
ur-Rahman Khan.
Khan Bahadur Mr. Ashiq Husain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Qazi Habib Ashraf
Khan Bahadur Chaudhri Muhammad
Rashid-ud-din Ashraf.
Rai Bahadur Lala Mathura Prasad Meh-
rotra.
Raja Jagannath Bakhsh Singh.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.
Dr. Ganesh Prasad.

QUESTIONS AND ANSWERS.

STARRED QUESTIONS.

*1 to *4. **Khan Bahadur Mr. Muhammad Aslam Saifi:** [*Postponed at the request of Government till the meeting of the Council on August 7, 1926.*]

SEPARATE REPRESENTATION ON NAINI TAL BOARD.

*5. **Khan Bahadur Mr. Muhammad Aslam Saifi:** (a) Will the honourable minister in charge of the Local Self-Government department be pleased to state if the memorial presented by the Muslim residents of Naini Tal relating to separate representation on the Naini Tal board in accordance with the population has received his consideration?

(b) If so, with what result?

Hon'ble Nawab Muhammad Yusuf: (a) Yes.

(b) There will be one elected and one nominated Muslim member on the municipal board.

*6. **Khan Bahadur Mr. Muhammad Aslam Saifi:** (a) Have the Government fixed the number of Muslim representatives on the board?

(b) If so, what is the number so fixed and whether it is in accordance with the proportion of their population?

Hon'ble Nawab Muhammad Yusuf: (a) Yes.

(b) The number is given in the answer to the previous question. The elected number has been fixed in accordance with the formula laid down in section 12 of the Municipalities Act.

*7. **Khan Bahadur Hafiz Hidayat Husain:** [*Withdrawn by the honourable member.*]

*8. **Khan Bahadur Shaikh Masud-uz Zaman:** [*Postponed at the request of Government till the meeting of the Council on August 7, 1926.*]

ARREST OF CERTAIN PERSONS IN JHANSI.

*9. **Khan Bahadur Shaikh Masud-uz Zaman:** (a) Is it a fact that nine Hindus and nine Muhammadans of newly inhabited places (Garhia Phatak and Nagra Pullia No. 9) of Jhansi were taken into custody on June 21 last and were released on bail?

(b) Was there any apprehension of the breach of peace?

(c) Is it a fact that Muhammadans of the newly inhabited places were not going to have cow-sacrifice in that locality?

(d) Is it a fact that the Muhammadans were not released till a day after *Bakr' Id*?

Hon'ble Sir Sam. O'Donnell: (a) Yes.

(b) Yes.

(c) The Government have no information.

(d) Yes.

* 10 to * 20. **Pandit Har Govind Pant** : [*Postponed at the request of Government till the meeting of the Council on August 7, 1926.*]

*21 to *24A. **Pandit Brijnandan Prasad Misra** : [*Postponed at the request of Government till the meeting of the Council on August 7, 1926.*]

JAIL MANUAL.

*25. **Pandit Brijnandan Prasad Misra** : When is the new Jail Manual expected to be published by the Government ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The honourable member is referred to the answer to starred question No. 86 of June 29, 1926.

Copy of starred question No. 83 of June 29, 1926, and its answer.

QUESTION.

Do the Government contemplate revision of the Jail Manual ? If so, when is the revised edition likely to issue ?

ANSWER.

The revision of the Jail Manual is in progress. It is not possible as yet to fix a date for the issue of the new edition.

*26 to *23. **Pandit Brijnandan Prasad Misra** : [*Postponed at the request of Government till the meeting of the Council on August 7, 1926.*]

ARREST OF CERTAIN PERSONS IN JHANSI.

*29. **Pandit Brijnandan Prasad Misra** : Were nine Hindus and eight Muslims of Garhia Phatak, Jhansi, bound down under section 103, Criminal Procedure Code, on June 21, 1926 ?

If so—

- (a) will the Government place a copy of the report of the police against the accused in the case on table ;
- (b) was any evidence recorded in the case and were the accused allowed reasonable facilities for cross-examining the prosecution evidence or securing legal help ;
- (c) at what time did the accused appear before the magistrate and up to what time did the court sit that day ;
- (d) were any of the accused arrested while on duty in the railway service and brought to the court in handcuffs ?

Hon'ble Sir Sam O'Donnell : Yes, but under section 107, Criminal Procedure Code.

- (a) Copies are laid on the honourable member's table.
- (b) Yes, in both instances.
- (c) 6 p.m. to 8.45 p.m.
- (d) Two accused gave trouble and were handcuffed until safely lodged in the police lorry. Such accused as were railway servants on duty were arrested with the consent and assistance of the railway authorities.

(See Appendix A, page 990).

DISMISSAL OF BABU RAGHUNANDAN SINGH, SUB-INSPECTOR.

*30. **Pandit Brijnandan Prasad Misra**: Why was Sub-Inspector Babu Raghunandan Singh of Baragaon police station, district Jhansi, dismissed?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: Sub-Inspector Babu Raghunandan Singh has not been dismissed. There is no officer of that name at Baragaon.

PULLING PUNKHAS BY INDIAN PRISONERS IN NAINI JAIL.

*31. **Pandit Brijnandan Prasad Misra**: Is it a fact that Indian prisoners in Naini jail have still to pull *punkhas* for their European fellow-prisoners?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: Yes, Government have accepted the principle that the present system, whereby Indian prisoners pull *punkhas* for European prisoners, should cease; but the problem of deciding what other system should be introduced requires careful examination of ways and means. The proposal to use Jost fans, which Government first favoured, is open to the objection that, as these fans are driven by hot air, they would raise the temperature of small cells to such an extent that they would defeat their own object. Government are therefore now examining the question of electrification. If a considerable sum of public money is not to be wasted, the problem must be thoroughly examined before a decision is reached.

Pandit Nanak Chand: When do Government propose to give effect to the principle that they have accepted that Indian prisoners should not pull *punkhas* for European prisoners?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: As soon as we have electrified the two jails for Indian and European prisoners, at Agra and Naini.

Pandit Nanak Chand: How many European prisoners are there in Naini?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: I do not know.

Pandit Nanak Chand: Are they all of such a status that they should be given this *punkha* facility by the Indian prisoners?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan: I am not aware of the status of all of them, nor am I aware if all of them are given this facility.

Pandit Nanak Chand: If all of them are not given this facility will Government consider the advisability of making the European prisoners who are not entitled to receive this *punkha* facility pull *punkha* for those who are entitled to receive this facility?

Hon'ble the President: That is an hypothetical question.

Rao Sahib Abdul Hameed Khan:

کیا موجودہ گرمی کے موسم میں یہی کمپن ہندوستانی قیدیوں نے انگریز قیدیوں کے لئے پنکھا کھینچا ہے؟

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan:

غالباً کھینچا ہوگا •

Rao Sahib Abdul Hameed Khan :

کیا انہیں کوئی concession یا رعایت کسی قسم کی دی جاتی ہے ؟

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan :

میرے خیال میں labour کے طور پر کرتے ہیں concession نہیں دیا جاتا •

Pandit Nanak Chand : What is the Government's intention in saying " Yes " when the Hon'ble Home Member said that he was not aware whether *punkha* was pulled by Indian prisoners or not.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The honourable member has misinterpreted me. The intention was that we have not been able to give any substitute for the *punkha*. We could not use Jost fans because the Inspector-General pointed out the disadvantages of using them.

Rai Bahadur Lala Mathura Prasad Mehrotra : Are these Indian prisoners exempted from other jail labour ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : As long as they pull *punkha* they can not do any other jail labour.

Raja Narayan Pratap Singh : The Hon'ble the Home Member said that it was the intention of the Government to use electric fans in jails. May I ask if it is the intention of the Government to allow use of these electric fans to Europeans as well as Indians ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : We are going to electrify two jails—one for Indians perhaps at Naini (Allahabad) and another for Europeans at Agra.

Khan Bahadur Maulvi Fazl-ur-Rahman Khan : Will the Government be pleased to state the reasons for allowing *punkhas* for European prisoners ?

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : The reasons are medical.

*32. **Pandit Brijnandan Prasad Misra :** [*Postponed at the request of Government till the meeting of the Council on August 7, 1926.*]

DEVELOPMENT BOARD.

*33. **Maulvi Muhammad Obaid-ur-Rahman Khan :** Will the Government be pleased to state—

(a) the aims and objects with which the development board has been formed ? Whether any of those objects and aims have been achieved up to this day ?

(b) whether any meeting of the said board has been called yet, and if the answer be in the negative, the reasons for not holding any such meeting may be stated ?

Hon'ble Thakur Rajendra Singh : The board was founded mainly for the purpose of co-ordinating the activities of the various departments of Government. Three meetings have been held. None has recently been held, as there were no questions which could usefully be referred to the board.

Maulvi Muhammad Obaid-ur-Rahman Khan : May I know when these three meetings were held ?

Hon'ble Thakur Rajendra Singh : The last meeting was probably held in 1922.

Maulvi Muhammad Obaid-ur-Rahman Khan : Do the Government know that notice was issued this time also and then the members were informed that the meeting will not be held. What were the reasons for postponing the meeting ?

Hon'ble Thakur Rajendra Singh : I have already said that there were no questions which could be referred to the board.

Maulvi Muhammad Obaid-ur-Rahman Khan : May I repeat my question, Sir ? I asked "Is the Government aware that a notice was issued and then the information was given that no meeting will be held ?" If the reply is in the affirmative, what were the reasons for postponing the meeting ?

Hon'ble Thakur Rajendra Singh : Yes, a notice was issued, but the meeting was postponed when it was found that no question could be referred to the board.

Pandit Nanak Chand : Is the honourable minister aware that the Government undertook to refer the question of unemployment among the middle class educated Indians to this board and the last meeting for which a notice was issued, but which was subsequently cancelled, was for this purpose ?

Hon'ble Thakur Rajendra Singh : I do not know for what purpose it was called. As far as I am aware, I am still considering the question and I have not come to any decision as yet as to what is the best method.

Pandit Nanak Chand : How do the Government propose to look into this question ?

Hon'ble the President : The honourable member seems to raise a different question altogether. It does not arise out of the question on the notice paper. He is referring to the question of unemployment.

Pandit Nanak Chand : Yes, Sir. The honourable minister said that there was no question that could be usefully referred to the board.

Hon'ble the President : That question has already been answered. As regards the other question, as to how the Government propose to tackle the question of unemployment, it does not arise. That is a different question.

Pandit Nanak Chand : I just want to point out to the honourable minister.

Hon'ble the President : The honourable member is not entitled to point out anything to the honourable minister.

Pandit Nanak Chand : I just want to inquire from the honourable minister as to how this question for which a meeting was fixed is going to be disposed of by the Government.

Hon'ble Thakur Rajendra Singh : I have already said that I am considering the matter.

Pandit Nanak Chand : How long will the Government take to consider this matter ?

Hon'ble Thakur Rajendra Singh : It is difficult to say.

Maulvi Muhammad Obaid-ur-Rahman Khan : Will the Government be pleased to say when they are going to hold another meeting of the Development Board to consider the agenda which was circulated to the members last time ?

Hon'ble Thakur Rajendra Singh : I do not know what the agenda was.

Hon'ble the President : Is that not a matter to be decided between the members and the Chairman ?

Maulvi Muhammad Obaid-ur-Rahman Khan : I think, Sir, the honourable minister is the Chairman.

Hon'ble Thakur Rajendra Singh : No, Mr. Pim is the Chairman.

THE AGRA TENANCY BILL.

SCHEDULE IV.

Hon'ble Sir Sam. O'Donnell : May I move a purely formal amendment to the heading of the fourth schedule Group A ?

Hon'ble the President : Yes.

Hon'ble Sir Sam O'Donnell : I move that in the heading of the fourth Schedule Group A for the words "other serials" the words "serial Nos. 4—9 inclusive" may be substituted and that for the words "serials other than 1, 2, 3, 10, 11, 12, 13, 14 and 15" the words "serials 4—9 inclusive" may be substituted, and that between the words "appeal" and "to the Civil Court" the words, "if any," may be added.

Amendment put and agreed to.

CLAUSE 234.

234. An assistant collector of the second class shall have power to dispose of all suits included in group A, except serial Nos. 1 and 2 in which the value of the subject-matter does not exceed two hundred rupees and all applications included in group C of the fourth schedule.

*Powers of assistant
Collector of the second
class.*

Hon'ble Sir Sam. O'Donnell : I beg to move that in lines 2 and 3 of clause 234 the words "included in group A except serial Nos. 1 and 2" be deleted and the words "specified in serial Nos. 4 to 9 (inclusive) of group A" be substituted.

Amendment put and agreed to.

Question, that the amended clause 234 stand part of the Bill, put and agreed to.

CLAUSES 235, 236, 237 AND 238.

Question, that clauses 235, 236, 237 and 238 stand part of the Bill, put and agreed to.

CLAUSE 239.

239. (1) Notwithstanding anything contained in section 15 of the Courts in which proceedings to be instituted. Code of Civil Procedure, 1908—

(a) all suits included in Group A except serial Nos. 1 and 2 in which the value of the subject-matter does not exceed two hundred rupees, and all applications included in group C of the fourth schedule shall be filed in the court of the tahsildar;

(b) all suits under serial Nos. 1 and 2 of group A, and all other suits included in group A in which the value of the subject-matter exceeds two hundred rupees, and all suits included in group B of the fourth schedule, and all applications included in group D of the fourth schedule, shall be filed in the court of the assistant collector in charge of the sub-division;

Provided that if there is no assistant collector in charge of the sub-division, all such suits and applications shall be filed in the court of collector:

Provided also that the collector may by written order direct that any class of suits or applications referred to in this sub-section shall be instituted in the court of any other assistant collector competent to try them under the provision of this Act.

(2) All applications included in group E of the fourth schedule shall be filed in the court of the collector.

(3) All applications included in group F of the fourth schedule shall be filed in the court empowered to entertain applications to be made. them under the provisions of this Act.

Hon'ble Sir Sam O'Donnell: I beg to move that in line 1 of sub-clause (a) the words "included in group A except serial Nos. 1 and 2" be deleted and the words "specified in serial Nos. 4 to 9 (inclusive) of Group A" be substituted, and that in line 1 of sub-clause (b) the word "and" between "1" and "2" be deleted and after "2" "3, 10, 11, 12, 13, 14, and 15" be inserted.

Question, that the above amendment be made, put and agreed to.

Question, that clause 239, as amended, stand part of the Bill, put and agreed to.

CLAUSE 240.

240. No appeal shall lie from the decree or order passed by any Appeal to be as court under this Act except as hereinafter provided. allowed by Act

Pandit Nanak Chand: I move that in clause 240 for the words "hereinafter provided" the words "as provided in this Act" be substituted.

Hon'ble Sir Sam. O'Donnell: I agree to this amendment.

Question, that the above amendment be made, put and agreed to.

Question, that clause 240 as amended stand part of the Bill, put and agreed to.

CLAUSE 241.

Question, that clause 241 stand part of the Bill, put and agreed to.

CLAUSE 242.

242. (1) Subject to the provisions of sub-section (3) of this section, an appeal shall lie to the collector from the decree of an assistant collector of the first class in any of the suits included in group A of the fourth schedule in which—

Appeals from decrees of assistant collector, first class to collector, from assistant collector, first class, or collector to commissioner or civil court.

- (a) the amount of value of the subject-matter exceeds rupees two hundred ; or
 - (b) the rent annually payable by a tenant has been in issue in the court of first instance, and is in issue in the appeal ; or
 - (c) the amount of rent payable separately to one or more of a number of co-sharers has been in issue in the court of first instance, and is in issue in the appeal ;
- and in any suit under sections 221, 222, 223, 224, 226 and 227 in which—

- (d) the amount of the revenue annually payable has been in issue in the court of first instance and is in issue in appeal.

(2) Subject to the provisions of sub-section (3) of this section and section 195 an appeal shall lie to the commissioner from the decree of a collector in any of the suits included in group A of the fourth schedule and which fall under any of the sub-heads (a), (b), (c) or (d) of section (1), and from the decree of collector or of an assistant collector of the first class in all suits included in group B of the fourth schedule.

(3) In addition to the provisions of section 271 an appeal shall lie to the district judge from the decree of an assistant collector of the first class or of a collector in all suits except suits under chapter XI in which—

- (a) a question of proprietary right has been in issue between the parties claiming such right in the court of first instance and is in issue in the appeal ; or
- (b) a question of jurisdiction has been decided and is in issue in the appeal :

Provided that when the amount or value of the subject matter of the suit exceeds Rs. 5,000, the appeal shall lie to the High Court.

Hon'ble Sir Sam O'Donnell: I move that in line 1 of sub-clause (1) the words "subject to the provisions of sub-section (3) of this section" be deleted; that in line 2 "District Judge" be substituted for "collector", that in line 3 at the end of the line after "first class" be added "or of a collector"; that at the end of clause 242(1) "provided that when the amount of value of the subject-matter of the suit exceeds Rs. 5,000, the appeal shall lie to the High Court" be added; and that in lines 2 to 5 of clause 242(2) the words "from the decree of a collector in any of the suits included in group A of the Fourth schedule and which fall under any of the sub-heads (a), (b), (c) or (d) of sub-section (1) and" be deleted.

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I ought to have made a formal amendment to the heading of this clause.

Hon'ble the President : The heading is not a part of the Bill, it is more or less for the drafter.

Question, that clause 242 stand part of the Bill, put and agreed to.

CLAUSES 243, 244, 245, 246 and 247.

Question, that clauses 243, 244, 245, 246 and 247 stand part of the Bill, put and agreed to.

CLAUSE 248.

248. (1) An appeal shall lie to the collector from the order of an assistant collector of the first class, and to the commissioner from the order of a collector, in any of the cases specified below, namely,—

- (a) orders under section 114, section 115, section 120 (c) and section 124 ;
- (b) orders deciding a question regarding compensation for improvements under section 78 ;
- (c) orders allowing time under section 80.

(2) An appeal shall lie from the following orders of an assistant collector of the first class or of a collector, namely, orders mentioned in sections 47 and 104 and in order XLIII, rule 1, of the Code of Civil Procedure, 1908.

Such appeal shall lie to the court, if any, having jurisdiction under section 242 of this Act to hear an appeal from the decree in the suit, or in the case of applications for execution, the court having jurisdiction to hear an appeal from the decree which is being executed.

(3) An appeal shall lie to the Board from every order under sections 40, 41, 42 and 74.

Hon'ble Sir Sam O'Donnell : I beg to move the following amendment to clause 248(1). That in line 3 the word "original" be prefixed to the word "order." It is clear from clause 249, that no appeals shall lie from any order passed in appeal. To avoid, however, any possibility of misunderstanding, it is proposed to prefix the word "original," so as to make it clear that it is an original order and not an appellate order.

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move that for the present sub-clause (1) (a) be substituted the words "(a) orders rejecting an application under section 15(2) and (3)" and that the existing sub-clause "(1) (a)" be renumbered "(1) (d)" and placed after "(1) (c)."

We have provided for appeals from orders made under this section and this amendment, therefore, seems desirable.

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move that a new sub-clause (2) be added as follows :—

"(2) An appeal shall lie from an order of an assistant collector in charge of a sub-division under section 18 in accordance with the provisions of section 18 (7)," and that the existing sub-clauses (2) and (3) be renumbered (3) and (4).

This is necessary for the sake of completeness.

Question, that the above amendment be made, put and agreed to.

CLAUSE 248 (3).

Hon'ble Sir Sam O'Donnell: I move that the word and figure "and 74" in line 2 be omitted and that for the "comma" between "41" and "42" the word "and" be substituted.

This is consequential on the deletion of clause 74 by the Council.

Question, that the above amendment be made, put and agreed to.

Question, that clause 248, as amended, stand part of the Bill, put and agreed to.

CLAUSES 249, 250 and 251.

Question, that clauses 249, 250, and 251 stand part of the Bill, put and agreed to.

CLAUSE 252.

252. The Board may call for the record of any case decided by any

Power of Board to call subordinate revenue court in which no appeal for cases. lies either to the district judge or to the Board,

and if such subordinate court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the Board may pass such order in the case as it thinks fit.

Khan Bahadur Hafiz Hidayat Husain: I beg to move that the words "either to the district judge or" be deleted.

My reason for making this amendment is that the Board of Revenue in this clause seems to be poaching on the authority of the High Court. The Board of Revenue can legitimately call for only those cases in which no appeal lies to the Board as such, but in which appeals lie to the Commissioner or Collector and to other subordinate revenue courts. If we allowed these words to stand it would simply mean that the Board can call even those cases in which an appeal lies to the district judge or civil court. This might result in a conflict of decision and also in conflict of jurisdiction. I, therefore, think that these words ought to be deleted.

Mr. R. Burn: I am not sure that the honourable member has quite understood what follows from this amendment. Clause 252 as drafted gives the Board power to call for cases in which there is no appeal either to the district judge or to the Board. If the words "either to the district judge" are deleted, it means that the Board will be able to interfere by way of revision in cases in which there was an appeal to the district judge. The intention of the Bill, as shown by the next clause 253, is that in cases like that where the appeal ordinarily goes to the district judge there should be a right of revision to the High Court. The provisions of the existing Act do not give a power of revision in such cases, but I am sure the honourable member does not wish that the Board of Revenue should interfere in cases in which there is a right of appeal to the district judge and in which the High Court could also interfere by way of revision.

Khan Bahadur Hafiz Hidayat Hussain: I will withdraw my amendment.

Amendment, by leave, withdrawn.

Question, that clause 252 stand part of the Bill, put and agreed to.

CLAUSE 253.

253. The High Court may call for the record of any suit or application which has been decided by any subordinate revenue court and in which an appeal lies to the district judge under section 242, section 243 or section 248, and in which no appeal lies to the High Court, and if such subordinate revenue court appears—

Power of High Court to call for cases.

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may pass such order in the case as it thinks fit.

Hon'ble Sir Sam O'Donnell: I beg to move that in lines 4 and 5 delete the words and figures "under section 242, section 243 or section 248." The High Court have a power of revision in all cases from the decision of the district judge. It is therefore unnecessary to specify the sections.

Question, that the above amendment be made, put and agreed to

Question, that clause 253, as amended, stand part of the Bill, put and agreed to.

CLAUSE 254.

254. Where the two members of the Board differ regarding a point of law they may make a reference to the High Court of Judicature at Allahabad, whose decision shall be final.

Reference by Board to High Court.

Pandit Nanak Chand: I move that in line 2 for the words "they may" the words "or of fact they shall" be substituted. The clause as it stands in the Bill provides that where the two members of the Board differ regarding a point of law they may make a reference to the High Court of Judicature at Allahabad, whose decision shall be final. It does not say what procedure the Board is to follow where the members of the Board differ on points of fact. I think such cases where such senior officers as the Members of the Board differ on points of fact will be very rare, but even these cases have to be provided for.

Hon'ble the President: Will the amendment as drafted meet the object of the honourable mover?

Pandit Nanak Chand: Yes, Sir, it will. This clause provides that in a case where there is a difference of opinion between the two Members of the Board on a point of law they may, if they so choose, refer the case to the High Court. I think that if the case is so intricate that there is a difference of opinion between such senior officers as the Members of the Board, either on a point of fact or on a point of law, it should be considered to be a fit case to be referred to the High Court for their decision. Where the evidence or the facts as disclosed by the record, in cases where the difference of opinion is on a point of fact, is too complicated and intricate for such senior officers to come to an agreement upon it, and also where the difference of opinion is on a point of law, then it should be obligatory upon the Members of the Board to send these cases for revision to the High Court. I think where such a question of law is involved, we ought to lay it down clearly in this Bill that the honourable Members of the Board of Revenue will in such cases send the case for revision to the High Court. Otherwise I am

afraid that, in spite of the case having presented some insuperable difficulty to the Members of the Board, it will have to remain undecided, in which case the decision of the lower court shall become final. It would be a different case, Sir, if the concurrence of the second Member of the Board were not necessary in such cases. I would be content if such cases were decided by a single Member of the Board. But when the case is referred for concurrence to the second Member of the Board and the second Member of the Board does not agree with his colleague who has heard the appeal, then I think it is a fit case for reference to the High Court and it should not be discretionary with the Members of the Board to send it to the High Court or withhold it. It should be obligatory in such cases of a complicated nature that the case should be referred to the High Court, when the two Members cannot come to an agreement on the merits of the case, to obtain the decision of a competent tribunal.

Mr. R. Burn: The amendment proposed by the honourable member for Bulandshahr deals with two questions. The draft in the Bill provides that if the two Members of the Board differ on a question of law, they may refer it to the High Court. In the first place, he wants that reference should be made to the High Court regarding a question of fact also. Under the law as it stands at present, there is no appeal to the Board on any question of fact. Under the new Act there are one or two clauses in which questions of fact may be raised before the Board. Clause 40 giving power to acquire land is perhaps the most important. It may be a question of fact for the Board as to whether a tenant's holding is four acres or less. But I think that most members of the Council would agree that questions like that will be very rare and that they are not fit matters to be referred to the High Court.

His next point is that if members of the Board differ they must refer the case to the High Court. I may explain that this clause is taken from the old law relating to the Court of the Judicial Commissioner of Oudh when that court consisted of only two judges. The honourable member has said that if two members differ, the point of law must be one of such importance that it is one which in the public interest ought to be finally settled. I cannot agree with him that this must always be the case. A point of law may arise in a very trivial case and it may not be worth while setting in motion the machinery of the High Court to get it settled. I may remind honourable members of this Council that an appeal lies against the decision of the Board of Revenue to the Privy Council and, as in the case of High Courts and Chief Courts, discretion is given to the Board whether they allow an appeal or not. I think also that in the case, which does not arise very often, where two members differ on a point of law, discretion ought to be left with them and there is no reason to doubt that they will act injudiciously.

Khan Bahadur Hafiz Hidayat Husain: I think the object of this amendment of my honourable friend Pandit Nanak Chand is that he wants to see that some uniformity is secured in the decisions of the Board of Revenue. Now, Sir, it is a notorious fact that the members of the Board of Revenue not only differ between themselves, but sometimes they also differ with themselves. For instance, an honourable member of the Board of Revenue gives one decision in one case and on

[Khan Bahadur Hafiz Hidayat Husain.]

identical facts gives a different decision in another case. The obvious result of this is that the subordinate revenue courts do not know which decision to follow and consequently do not care to follow them. On account of this diversity of decisions and uncertainty in the future, there is no coherence in the revenue law at all. But I do admit that the difficulties that have been pointed by the Senior Member of the Board of Revenue are real difficulties and I do not think myself that the Hon'ble Judges of the High Court will very much cherish the idea of giving decisions on minor points of revenue law on which the Board of Revenue may have differed among themselves. The Board of Revenue decide cases purely of revenue matters and the only thing to secure is uniformity in their decisions, say by a reference to some other authority as the Finance Member.

Hon'ble Sir Sam O'Donnell: I think the objection to this amendment has been stated today very clearly by Mr. Burn. It is not desirable that on every petty question on which there happens to be a difference between the two Members of the Board, a reference should be made to the High Court. Suppose one member thinks that the area is three acres and the other member thinks that it is four acres, are we going to ask the High Court to sit solemnly in judgement on an issue of that kind?

Khan Bahadur Hafiz Hidayat Husain has said that the Board are not consistent in their decisions. I am not prepared to admit that. But even if we do admit that they are not always consistent in their decisions, this amendment would not affect the matter in the least. It does not say that the Board shall decide in the same way identical questions. It merely says that if the two Members of the Board differ, then the question will have to be referred to the High Court. That argument has then no force, and I think the Council will agree that every single petty question either of fact or of law, ought not necessarily to be referred to the High Court. I do not think the High Court would themselves appreciate a change in law which would impose that burden on them.

Pandit Nanak Chand: As I pointed out in my previous remarks, such cases are not frequent and there are not many cases where the honourable members of the Board of Revenue differ between themselves. I know that no appeal lies to the Board of Revenue on a point of fact, but, as has already been pointed out by the Senior Member of the Board of Revenue, points of fact will arise in certain cases which will have to be decided by the Board. I have for this reason included a point of fact also in my amendment. As regards the argument that the cases in which such a difference of opinion might arise on a point of law will be of a trivial or petty nature. It is possible that cases which are regarded as petty and trivial by the Board of Revenue might be cases of very serious consequence to the landlords and the tenants, and when such differences do find place among such senior and experienced officers, I think it is absolutely necessary that a reference should be made to the High Court.

The Senior Member of the Board of Revenue has pointed out that the Board have got discretion to allow leave for appeal to Their Lordships of the Privy Council in certain cases. Every honourable

member of this House will readily recognize that to prefer an appeal before Their Lordships of the Privy Council is not an easy matter. It costs a good deal in time and money and I think it is beyond the capacity of even many of the landlords, what to say of tenants. I think it would be much better if, instead of this power having to be exercised by the Board, the cases are decided here by the highest tribunal in these provinces to which such judicial point should be referred.

Hon'ble the President : The amendment is that in line 2 of clause 254 for the words "they may" the words "or of fact they shall" be substituted.

Question, that the words "they may" stand part of the clause, put and agreed to.

Question that clause 254 stand part of the Bill, put and agreed to.

CLAUSES 255 TO 261.

Question that clauses 255 to 261 stand part of the Bill, put and agreed to.

CLAUSE 276.

276. When the Collector has passed an order declaring the number of suits instituted after the thirtieth day of June, 1924, under section 58, clause (a) or clause (b) of the Agra Tenancy Act, 1901, relating to land in a specified mahal, to be excessive, then if any such suit is pending in the court of first instance at the commencement of this Act, the court shall dismiss the suit :

Provided that nothing in this section shall apply to a suit for the ejectment of a thekadar, a sub-tenant, or a tenant of *sir* or grove-land or pasture land :

Provided also that a tenant, the suit against whom has been dismissed under this section, shall not be deemed to have acquired the right of an occupancy tenant at the commencement of the Act, unless he had acquired such right at the date of the institution of the suit.

Hon'ble Sir Sam O'Donnell : I beg to move that for the clause in the Bill the following be substituted :—

"1. When at the commencement of this Act proceedings in the court of first instance in any suit instituted under clause (a) or clause (b) of section 58 of the Agra Tenancy Act, 1901, at any time between the first day of July, 1924, and the thirtieth day of June, 1926, inclusive, are stayed under an order of the Collector, the court shall dismiss such suit, and the order of the Collector staying the suit shall not be questioned in any civil or revenue court.

2. The Collector may pass an order declaring the number of suits instituted after the thirtieth day of June, 1926, under clause (a) or clause (b) of section 58 of the Agra Tenancy Act, 1901, relating to land in any specified mahal, to be excessive, and the court shall thereupon dismiss all such suits :

Provided (a) that in deciding whether the number of such suits is excessive, the Collector shall have regard to the average number of suits instituted in the five years preceding the first day of July, 1924, in respect of land in that mahal under the aforesaid clause of section 58 of the Agra Tenancy Act, 1901, and (b) that the number of such

[Hon'ble Sir Sam O'Donnell.]

suits instituted after the thirtieth day of June, 1926, shall not be deemed to be excessive unless it exceeds by fifteen per cent. the average number of such suits instituted during the aforesaid five years.

3. Nothing in this section shall apply to a suit for the ejectment of a thekadar, a sub-tenant or a tenant (Here I propose to make a purely verbal change) of land in which statutory rights do not accrue under the provisions of section 19.

4. A tenant, a suit against whom has been dismissed under the provisions of this section, shall not be deemed to have acquired a right of occupancy at the commencement of this Act, unless he had acquired such a right at the date of the institution of the suit.

As the Council knows, as soon as it became known that legislation amending the Act II of 1901 was contemplated a very large number of ejectment suits were filed in the year 1924. I think the number was something like 272,000. In one district alone there were 72,000 suits for ejectment, and the same thing happened in the following year 1925. As I explained on previous occasions to the Council we took the view that, while it was reasonable that ejectments should be allowed to proceed on a normal scale pending the passage of the Bill, it was wrong and against the public interest that wholesale ejectments should be allowed and that hundreds of thousands of tenants should be ejected or subjected to exactions. Accordingly instructions were issued by the Board of Revenue under which, when there was clear reason to believe that wholesale ejectments were contemplated in anticipation of the new legislation, suits were stayed; otherwise suits were allowed to proceed. Section 276 as it stands in the Bill provides for the treatment of suits which were stayed, but that clause was drafted a long time ago and it does not clearly provide for the suits filed during the current agricultural year, that is, since June 30. My amendment is designed to remedy that omission. It is based on exactly the same principle as the original section. What I mean is that it allows ejectments on a normal scale and prevents ejectments only when it is clear that they are wholesale ejectments designed either to defeat the Bill or to enable the landlord to exact *nazrana*.

Rai Sahib Lala Jagdish Prasad : I beg to move that the Hon'ble the Finance Member's amendment be amended as follows:—

(a) After sub-clause (1) add the following proviso:—

"Provided that the process fees and court fees paid by the plaintiffs in such suits shall be refunded to them"

(b) In sub-clause (2) at the end of line 5 add the following words:—

"and order the refund to the plaintiffs of the process fees and court fees paid by them in such suits."

(c) In sub-clause (2), proviso (a), in line 3, between the words "instituted", and "in the" insert the words "by individual proprietors," and for the word "five" substitute the word "ten."

(d) In sub-clause (2), proviso (b), in line 6, between the words "instituted" and "after" insert the words "by an individual proprietor;" and in the last line between the words "instituted" and "during" insert the words "by him" and for the word "five," substitute the word "ten".

If my amendment is carried the clause will run thus:—

"(1) When at the commencement of this Act proceedings in the court of first instance in any suit instituted under clause (a) or clause (b) of section 58 of the Agra Tenancy Act, 1901, at any time between the first day of July, 1924, and the thirtieth day of June, 1926, inclusive, are stayed under an order of the collector, the court shall dismiss such suit, and the order of the collector staying the suit shall not be questioned in any civil or revenue court:

Provided that the process fees and court fees paid by the plaintiffs in such suits shall be refunded to them.

(2) The collector may pass an order declaring the number of suits instituted after the thirtieth day of June, 1926, under clause (a) or clause (b) of section 58 of the Agra Tenancy Act, 1901, relating to land in any specified mahal, to be excessive, and the court shall thereupon dismiss all such suits and order for the refund to the plaintiffs of the process fees and court fees paid by them in such suits.

Provided (a) that, in deciding whether the number of such suits is excessive, the collector shall have regard to the average number of suits instituted by individual proprietors in the ten years preceding the first day of July, 1924, in respect of land in that mahal under the aforesaid clauses of section 58 of the Agra Tenancy Act, 1901, and (b) that the number of such suits instituted by an individual proprietor after the thirtieth day of June, 1926, shall not be deemed to be excessive unless it exceeds by fifteen per cent. the average number of such suits instituted by him during the aforesaid ten years."

The rest of the clause remains as moved by the Hon'ble the Finance Member.

In the first instance I must tell the Council that I am of opinion that all the ejectment suits that were suspended by the executive order of the Board of Revenue in 1924, and all the ejectment suits that have been filed (or may hereafter be filed) after June 30, 1926, should be disposed of in the ordinary course because I hold that, as long as an enactment continues in force and is not superseded or repealed by a new enactment, all persons are entitled to benefit themselves by the provisions of that Act. Secondly, the order of the Board of Revenue issued in 1924 had not the sanction of law behind it. It was an executive order, and I consider that an executive order, should not be allowed to override a legislative enactment. So, Sir, my idea is that all these suits should be disposed of in the ordinary manner according to the provisions of the existing Act. But as I consider that my views will not perhaps find favour with the majority of the members present in this House, I have moved these amendments to the amendment of the Hon'ble Finance Member, and I will give my reasons in support of my amendments. The first amendment is that in all these suits that are dismissed according to this amendment of the Hon'ble the Finance Member, the process fee and the court-fees should be returned to the plaintiffs. This, I consider, is a very fair proposition, because when the zamindars who filed these ejectment suits in good faith according to the provisions of the existing Act are going to be debarred from benefiting themselves by the provisions of the existing Act, at least this much fairness should be shown to them that the money that they have spent over the institution of these suits

[Rai Sahib Lala Jagdish Prasad.]

should be refunded to them. These zamindars should not be doubly penalized. You are penalizing them to the extent that the ejectment suits that they have filed are going to be dismissed, and if my amendment is not carried you will be penalizing them doubly because you will be depriving them of the money which they spent over the institution of these suits. I think, Sir, that this much punishment is sufficient for them that they are being deprived of the benefit of ejecting those tenants against whom they instituted these suits, but at least the court fees and the process fee that they have paid ought in all fairness, to be refunded to them. My second amendment is that in calculating whether the number of suits instituted in a mahal is excessive, regard should be had to the number of cases instituted by individual proprietors. Because if you calculate whether the number of suits is excessive on the basis of the total number of suits instituted in a mahal, the result will be that some proprietors will have to suffer on account of the action of others. It is very probable and very likely that some co-sharers might have brought only a limited number of suits, whereas others, quite a large number, so that if you are going to calculate whether the number of suits is excessive on the basis of the total number of suits instituted in a mahal, it means that even those zamindars or co-sharers who instituted a small number of suits would be penalized because certain other co-sharers instituted a large number of suits. This certainly, is a very unfair proposition. If you are going to debar a co-sharer from having the benefit of all the ejectment suits filed, at least let the fact as to whether the number of suits is excessive be ascertained on the basis of the average number of ejectment suits which that very co-sharer instituted. Otherwise it would be very unfair. My third amendment is that in place of calculating on the basis of average number of suits instituted during the five years preceding the 1st of July, 1924, the average number of suits for ten years should be taken as the basis, because it is possible that during five years preceding July 1924, there may not be any suits instituted in a particular mahal, and if you are going to calculate whether the number of suits is excessive on the basis of the average number of suits instituted in five years in a mahal it means that if a zamindar is the only proprietor of a mahal and if he has been good enough not to bring any ejectment suits during the five years preceding July, 1924, he is going to be penalized for that action, as he will not be able, according to the terms of the clause, to get any suits disposed of hereafter, I mean any suits which he instituted after the June 30, 1926, whereas, if the number of suits instituted in a mahal during the five years has been large, then the zamindar will have the benefit of getting ejectment suits disposed of to a large extent. That means that a man who has been good enough in the past must suffer, and to a man who has already sufficient more should be given. I think, Sir, that is very unfair. If you calculate the excessive number of suits on the basis of the average number of suits instituted during ten years preceding 1924, then I suppose that the hardship may be minimized to some extent, because it is possible that the average number of suits in a mahal brought by a zamindar during ten years may be greater. So I hope that in the case of calculations the average number for ten years will be taken. I think, Sir, that my amendments do not go far enough, but I hope that, for the sake of fairness and justice at least, these amendments

to the amendment that has been moved by the Hon'ble the Finance Member will be carried.

Khan Bahadur Mr. Muhammad Aslam Saifi: I wish, Sir, to move my own amendment, No. 9 on the original list.

Hon'ble the President: Will you move it as an amendment to the amendment of the Hon'ble the Finance Member?

Khan Bahadur Mr. Muhammad Aslam Saifi: Very well. I move it as an amendment to that amendment.

I beg to move that in line 6 "suits" be substituted for "suit."

Hon'ble the President: You must say which lines of the amendment of the Finance Member you wish to alter. You must fit it in with that amendment.

Khan Bahadur Mr. Muhammad Aslam Saifi: My amendment would not fit in in that way. I want to move my amendment to the clause itself.

Hon'ble the President: In that case you will have to oppose the amendment of the Finance Member?

Khan Bahadur Mr. Muhammad Aslam Saifi: Yes, I am afraid I will have to oppose that amendment.

Hon'ble the President: All right.

Khan Bahadur Mr. Muhammad Aslam Saifi: I move, Sir, that in line 6 "suits" be substituted for "suit" and "are" for "is." Delete the last three words of line 8 and add the following after the word "shall":—"require the plaintiff to bring down the number to 33 per cent, as fixed in the circular of the Board of Revenue. The suits so specified shall be decided on their merits and the rest shall be summarily dismissed."

The clause as amended will read thus:—(I am reading from the sixth line) "then if any such suit is pending in the court of first instance at the commencement of this Act, the court shall require the plaintiff to bring down the number to 33 per cent as fixed in the circular of the Board of Revenue. The suits so specified shall be decided on their merits and the rest shall be summarily dismissed."

Sir, I have to oppose the amendment of the Hon'ble Finance Member for the simple reason that to me it appears to be somewhat of a dark horse.

Hon'ble the President: I can only offer a piece of advice to the honourable member. If I judge the situation aright, clause 276 seems to have no friends and is likely to be deleted, and if clause 276 is deleted the amendment of the honourable member will fall with it. It would be better, therefore, if the honourable member is very serious about his amendment, to move it as an amendment to the amendment of the Hon'ble the Finance Member and fit it somehow into it. The honourable member can take time if he so likes. Is the honourable member ready or does he wish to take time?

Khan Bahadur Mr. Muhammad Aslam Saifi: I think I require some time to fit in my amendment in the Finance Member's amendment. Will you give me some time, Sir?

Hon'ble the President: Certainly, I can give you time.

Khan Bahadur Manvi Muhammad Fazi-ur-Rahman Khan : Sir, I wanted to move for the total deletion of clause 276.

Hon'ble the President : You can do that still.

Khan Bahadur Manvi Muhammad Fazi-ur-Rahman Khan : Now the Hon'ble the Finance Member is also opposed to that obnoxious clause. This has certainly facilitated my task to some extent. He has, however, redrafted the clause and has made some important changes. I am pleased that I am opposed to his amendment also. It is not with a heavy heart that I am opposing his amendment; it is with great pleasure that I am doing so. The Agra Tenancy Act of 1901 was a living Act and it was binding as much on the Board of Revenue as it was binding on the parties concerned. I mean landlords and tenants. In the lifetime of the Act the Board of Revenue by a stroke of the pen nullified section 58 and stayed all ejectment suits. I am at my wits' end to find any reason or justification for this uncalled for and objectionable order. I cannot find any justification for this illegal order. Certainly, Sir, Government members will also be at their wits' end to find any justification for it. The Board of Revenue appears to be afraid of a civil action. It is why the amendment of the Hon'ble the Finance Member provides that the order will not be questioned in any civil or revenue court. The amendment says that the order of the collector dismissing the suits shall not be questioned in any civil or revenue court. This clearly shows that the mover is convinced of the illegality of the order of the Board of Revenue. It is regrettable that in the time of the reformed council, and when the country is expecting a second instalment of reforms, such orders have been passed and such orders have been allowed to stand. The matter does not end here. An attempt is now made to induce this Council to legalize that order. It is most unfair. Now let me see whether my Swarajist friends who always talk of justice, good conscience and equity will support this order today or will reject it. I have still some confidence in their sense of justice and have every hope that they will agree with me—at least on the present occasion. I must tell the Council that my suits are not stayed. I was not hard on my tenants. I filed very few suits and all of them were tried on their merits and decided. It is only on public grounds that I am opposing this amendment. If you refer to my note of dissent—I mean our note of dissent—you will find that this clause has been very strongly condemned by us and along with it the order of the Board of Revenue. If this clause is allowed to stand, Sir, the Council will be punishing only the good landlords. Good landlords gave out seven-year leases; they did not eject their tenants. When the term of the lease expired, they again gave a lease, a long-term lease and did not apply for the ejectment of their tenants. They do not possess sufficient land for their *khudkasht* or *sir*. The conditions which are at present prevailing in this country convince me, and all those who are cognisant of the existing circumstances know, that in the near future zamindars will have to fall back on agriculture. Section 40 has no doubt been amended. But there you find an embargo of four acres and other insurmountable impediments. That section, Sir, I think will not be sufficiently effective. The majority of good landlords do not possess sufficient land. You are now dismissing their suits altogether, some of them require land very badly. Assuming for a moment that section 40

will be effective, even then you will find a remarkable difference between the position of good landlords and that of their less sympathetic brethren. Bad landlords ejected their tenants some two or three years ago and got land without paying any compensation, whereas good landlords will get land after paying huge compensation. Such a state of affairs will not do credit to any civilized legislature. I put a question to the Government members as well as to my Swarajist friends. What will they think of an enactment which demands the total dismissal of all suits rightly filed in competent courts under a living section of a living Act? Another reason that can be advanced in favour of my proposal is that there are innumerable rulings of different High Courts to the effect that the operation of a living law cannot be suspended. If you refer to those rulings you will find that my argument is irrefutable. The present clause as well as the amendment of the Hon'ble the Finance Member are opposed to the principles of jurisprudence, and are intended simply to legalize an illegal order of the executive. I am not opposed to tenants at all. I admit that this amendment will benefit them, but it will harm the landlords without any justifiable reason. Law must have its course. I am not prepared to encourage the executive to break our laws with impunity. I remember that there was a great hue and cry when section 144 of the Criminal Procedure Code was applied to public meetings. It was contended with great emphasis that that section was never intended to be applied to public meetings and the executive was certainly wrong in doing so. Let me see if those gentlemen who raised this hue and cry possess sufficient courage and come forward today to support me in my argument that the executive should not be allowed to break our living laws. The amendment of the Finance Member no doubt allows ejectment within a certain limit. I am of opinion that the limit prescribed is too narrow to be acceptable to us. The amendment places good landlords at a disadvantage without any fault on their part. It is an admitted fact that good zamindars did not sue their tenants for ejectment very often. There are many landlords who did not get their tenants ejected within the last five years. Those unfortunate persons will not be allowed to file ejectment suits if the amendment of the Hon'ble the Finance Member is accepted by the House. They are being punished for their kindness to their tenantry. Those landlord who were less favourably disposed towards their tenants and frequently got them ejected will be better off.

Moreover, our laws, if they are meant to command respect, must be free from such objectionable and illegal provisions. For these reasons I am opposed to the original clause as well as to the amendment moved by the Hon'ble the Finance Member. I ask the Council to delete the clause and to reject the amendment.

Pandit Govind Ballabh Pant: I have two amendments on the agenda: one relates to the original clause itself and the other is by way of an amendment to the amendment moved by the Hon'ble the Finance Member. Which of these should I move?

Hon'ble the President: The honourable member can choose his own course. But my advice to him would be to move it as an amendment to the Hon'ble the Finance Member's.

Pandit Govind Ballabh Pant : If I move an amendment to the amendment of the Hon'ble the Finance Member, will I have the right of reply ?

Hon'ble the President : How can that be ?

Pandit Govind Ballabh Pant : I move that the following be substituted for sub-clause (2) in the Hon'ble the Finance Member's amendment.

"The court shall dismiss all suits instituted after the thirtieth day of June, 1926, under clause (a) or clause (b) of section 58 of Act II of 1901 that may be pending in the court of first instance at the commencement of this Act."

I may inform the Council at the outset that it is not in a light-hearted mood or in a spirit of levity that I move this amendment. I am putting it forward with a full sense of my responsibility, and I do so with the little knowledge that I possess of jurisprudence, constitutional law and the theory of legislation. I am glad that my friend the honourable member for Shahjahanpur did not refer to the letter of the law when he addressed us in connexion with the motion that is before the House. He asks us to examine it in the light of justice, equity and good conscience. It is exactly on these principles, which are of a veritable nature, which are perpetually true and which never fail, that I ask the honourable members of this House to consider the amendment that I have just moved. What I ask them to place before themselves is the result of the passage of the present Bill: what I ask them to visualize is the effect that will follow. If amendments are allowed this year in the manner provided in sub-clause (2) of the amendment moved by the Hon'ble the Finance Member, then I will ask the honourable members to tell me if, in accordance with their notions and with their regard for the sacred principles of justice, equity and good conscience on which the mover or the speaker before me laid great stress, it is or it is not right and proper that the amendment that I have moved should be accepted ? So far as the order of the Board of Revenue is concerned, it is not before me. I am not concerned with it. I agree with the principle that the executive should not override the law. I entirely accept that it is a dangerous principle for the executive to stay the operation of the law by executive ukase; but, while admitting that, I have to ask the honourable members to remember that there are principles which are even of a more domineering character, which are entitled at times to greater weight than the regard to the mere letter of the law. The course that was adopted by the Board of Revenue was in accordance with precedent. If they will refer to the Oudh Rent Act, they will find in fact that under that Act not only were suits stayed for a short while, not only were notices declared invalid for a short interval, but for a full period of three years prior to the passage of the Act. The legislature enacted that all notices that had been given should be regarded as invalid. I will refer my honourable friend to section 159 of the Oudh Rent Act and will read over for his enlightenment this clause which says:—*"A notice of ejectment which has been served upon a statutory tenant under section 55 at any time after the fifteenth day of November, 1919, and before the eleventh day of February, 1922, shall be invalid"*. It covered a period intervening between two dates, such as the fifteenth day of November, 1919 and the eleventh day of February, 1922, during which notices shall be invalid. I am not concerned here,

as I said at the outset, with the legality of the Board's order. I think it is up to the honourable members who feel aggrieved to take such action as they think is open to them under the law. What I am concerned with is the present clause and whether the present clause, as it has been moved by the Hon'ble the Finance Member, is right and just, or whether it should be amended in the light of my amendment. Sir, after all, every legislative measure must have some object before it; there must be some reasons behind it; there must be some scheme embodied in it. Does the Hon'ble the Finance Member's amendment not neutralize the effect *in toto* of the object of the Bill which we have taken so long to consider? Does it not altogether nullify the little good that we have been expecting from this measure? What, after all, is the effect of the present Bill? The only thing that it concedes to the tenants on its face is this, that they will have statutory life-tenure. Well, if I have a little tenderness for this Bill, it was only on two grounds; because I thought that it would prevent the dislocation of the present agrarian condition. I thought that those persons who were in possession of their lands at present would at least have this consolation that, though they would never acquire any occupancy rights, though their children would have to get into the streets soon after their death, still they would during their life-time be enjoying the meagre produce of their fields, paying such rates of rent as the exigencies of the situation had compelled them to submit to. The only other thing that is of some importance for me are those clauses relating to rent and the omission of the roster system, on which my friends the zamindars are agreed and which are there, not because of the mercy of the Government, but because of the fairmindedness of the gentlemen sitting on the cross benches. But if you take away the first thing, if you allow the tenants to be disturbed today, if you say that suits for ejectment will be instituted today and not only will they be liable to ejectment today, but they will be followed by the law; while decrees will be passed this year, ejectments will follow next year in July or some time after the *rabi* crops are garnered. I say you are defeating the only object, the only reasonable purpose, the only wholesome thing that one can expect from this Bill. If the tenants today are disturbed, not only that, but if for a year after this, the sword of Damocles will be held over them, they will have to sleep in a nightmare and they will feel that under this Bill they will be nowhere. That will be the first upshot and outcome of this Bill. After all, this Bill is responsible for a large number of ejectment suits that were instituted in 1924 and 1925. But for this, the zamindars would not have gone out of their way to institute such an enormous number of suits. Thus, while provoking them into doing so, they instituted as many as 3,00,000 ejectment suits in 1924. The Government with its unlimited resources has not disclosed to us what was the number of suits instituted in 1925. But when I am told, as I gather, that the postponement covered as many as 50,000 suits, I feel that probably the ejectments in 1925 also went up to a figure approaching three lakhs. Well, it is contrary to all principles of legislation to introduce a principle of this nature which goes to neutralize, to nullify the provisions of the Bill which we are enacting. If the principle of statutory tenancy is adopted, if it is accepted by the legislature and by this House that the ejectment of non-occupancy tenants is an evil and we should put a stop to it, I see no reason why the legislature should

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not make a provision of the character that I am proposing. It is not an executive order that I am asking for. But is it not the right of this House to take such action as they think justice, equity, and good conscience and the larger interests of the country demands from them? If they are ignoring all these principles, then I say that legislation is futile. It may be mischievous. I agree that Government has a very stupid way of doing things. It has sometimes a very foolish way of doing unwise things, and I tell you that so far as this clause is concerned it includes both the things jumbled together. On the one hand, they went out of their way to stay the suits in 1924 and 1925 and what is the result? The total number of suits filed during those two years came up to about six lakhs and the number of ejectments was more $4\frac{1}{2}$ lakhs. On the one hand, they exposed themselves to the just criticism that it was an executive order which restrained the operation of the law. On the other hand, they are now undoing all that they had done and they are just doing what they ought to have done as persons responsible for a legislative measure. They say that so far as 1924 and 1925 are concerned, all the suits that were stayed will remain stayed. The landlord with a full knowledge of the fact that this Bill is being enacted will be given a further licence to institute suits, provided they keep within a certain limit. There is no logic about the proposal. Take a mahal in which between 1919 and 1924 a man did not file any suit for ejectment and consequently was all the more entitled to institute a suit today, there the zamindar will not have the right to institute a suit; but where such suits have been instituted in 1919 to 1924 they are being given this further opportunity of instituting similar suits this year. Well, to me it seems a very splendid way of dealing with a difficult situation in a rational, scientific and dictatorial manner against the very principles of legislation. If you are going to preserve the present tenants in the occupation of their holdings, you can practically do so by not allowing ejectments this year. and I can tell you that according to all precedents and all notions of legislation it is up to us to say that there should be no ejectments this year. As we all know, the committee was appointed to consider this Bill in April, 1924; its report was issued in August, 1924; everybody has been taking every possible resort, and, human nature being what it is, everyone should do so, in order to nullify the effects of this Bill to the extent that it is prejudicial to his interests. Now, what will be the result if these people are allowed to institute suits for ejectments this year? The effect will be this; not only will they be ejected, but there will be a considerable premium imposed on land because of the statutory rights that will be acquired hereafter. They will be allowed to reoccupy land not only on the payment of the ordinary *nasranas* and of the payment of ordinary enhancement of present rates of rents, but they will have to pay a much higher value because of the risk of losing all land for a long time if they did not pay. In the circumstances, I think it is a very unwise principle that is being embodied in this Bill. I, in fact, feel that there would be nothing left in it, nothing worth considering, nothing that can possibly outbalance the loss that is being caused to the tenantry by the omission of the principle of occupancy rights, after the clause that has been introduced by the Hon'ble the Finance Member is passed, and it is

inevitable that it will be passed, however much we may regret it. Well, I say that if we want this Bill to be enacted, if we do really feel that statutory tenancy should be conferred on the present tenants, then there should not be any ejectments this year. Ejectment suits should be instituted only on July 1, and who is responsible for fixing the time? The Government could very well have appointed an earlier date for the consideration of this Bill. It is perhaps because of the confabulation between them and the Government of India over the Land Revenue Bill that they were not in position to do so earlier, but all the same we are not responsible for that. The poor tenant is not responsible for it. They were told the zamindars were losing all their rights, which gave them all the provocation that any reasonable man must feel when he is told that he is being deprived of certain rights he possessed. And having delayed the decision on this Bill for more than two years, they now say that ejectment suits will be permitted this year. I know the Government have their difficulties in matters of this type. I know that many have been the occasions when the Government have felt embarrassed, but do we or do we not stand by certain principles? Do we or do we not owe allegiance to the principles which were embodied in this Act? If we do, is it or is it not, consistent with the provisions that we are making that we should make a provision which will secure the enjoyment of the privileges, the much avowed, the much advertized privileges, which we all sought to be conferred by this Bill. Well, Sir, I think the average area on which ejectment suits were filed and on which ejectment was usually carried out in previous years prior to 1924, exceeded three lakhs of acres. Are the Government allowing three lakhs, and more than that 15 per cent., that is, 3,50,000 acres to be subject to ejectment? If they do so, what is there left? They must remember that under clause (c) which has been annexed to clause 4 of this Bill, there will be a further temptation for the zamindars, they will be acquiring additional *sir* rights, irrespective of the *sir* that they possessed, if they turn out the tenants altogether and bring this area under their cultivation, not because they need it, but because naturally they must be anxious and desirous of acquiring all those valuable rights which can be beneficial to them. Is the Government not thereby preparing the way for turning them out? Consider the condition of the timid, ignorant, simple, resourceless and poor villagers and cultivators who have nothing to fall back upon except their land, and who are now, because of this measure, being thrown out of the very thing which they require for their sustenance and for the maintenance of their children, whom they can support only with great difficulty by giving them one meal perhaps in a day or in two. That will be the effect of this clause, and if the Government had taken credit into their hands, they could have very well come forward with a better proposal. After all there are limits to concessions, and this Bill, I do say, is made almost useless, if not pernicious, if such a clause is put in it. There was, as I told you, an executive order by the Board of Revenue, and what was the area affected? It will be much less now than the ejectments that can be allowed under the present clause of the Hon'ble the Finance Member. There was so much ado about nothing. There was so much legitimate criticism over it. The Government exposed itself to the barterage of my learned friends, and they could not possibly give a

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better reply. But what was the end they gained and what is it that they are going to do? I think it would have been more reasonable, it would have been more in accordance with the letter of the law, if they had said that the tenant will be allowed to remain in occupation of his holding for one year. I honestly feel that the tenantry in a year would have been better off. If there were a clause like that, then it would have been more in accordance with the language of the civilized law and it would perhaps have been less pernicious than this clause that is now before us. In any way it is contrary to all principles of legislation that provision should be made in this very Bill which goes to nullify all that this Bill pretends to give. Whether it gives anything in reality it will be for the tenants and zamindars to realize after they had some experience. I, Sir, do not think I can ask your indulgence any further, but the question is of very great importance. My friends have referred to seven-year leases. If they have regard for the good landlords who had given seven-year leases, then I, Sir, do not want to penalize them by giving better privileges to those who have kept their tenants year to year. So far as seven-year leases are concerned, those good people, that great body of good landlords, as they have been termed by some honourable members, will have no remedy after you pass that clause, for the period of the lease has not expired, yet those good landlords will be penalized and will not have any remedy against their tenants to whom they have given leases. The bad landlords who have given no leases will be empowered by this clause to eject their tenant this year. I ask them to see the anomaly of that on the basis of their arguments irrespective of my views about them. I inquire from them whether, having regard for equity and fairness, their own belief and conviction can say that it is justifiable. The result will be that those landlords who have given no leases will be empowered to eject their tenants while those who had given seven-year leases will be bound by their contracts. I hope this House will, in spite of all the temptations to go against justice, equity and good conscience, stick to these principles, as they are eternal verities of life.

Dr. Zia-ud-din Ahmad : By the speech delivered by the leader of the Swaraj party two days ago in connexion with the thekadari right, I got the impression that he was very much in favour of the decision of the Zamindars' Association of the Agra province. But the speech which he has just delivered today has made me change my mind, and I think his position is just the same as the position of the effeminate son of a king. The king was advised by his counsellors that the son should be taught Shahnama in the hope that he would learn the heroic deeds, but, after reading the whole of the Shahnama, when he was asked to read certain poems, to the disappointment of everybody, he read only one effeminate poem out of 32 thousand poems in the whole of the Shahnama.

There is a very big report published by the Zamindars' Association and the only piece of importance and value he could pick out was a particular clause which was added as a kind of compromise and he quote it as if it was gospel truth and the settled opinion of the Zamindars' Association.

I was always under the impression that the persons who always value and would like to uphold the law, were the members of the

Swaraj party and that if the Government ever took any action by setting aside a section of the Penal Code and imprisoning a large number of persons, then the persons who would raise their voice against such action of the Government would be the members of the Swaraj party. But I am surprised to find that if similar action is taken against any other section of the community, which does not affect them, then on the contrary they would come forward to uphold it and to legalize that particular action. I, therefore, think that an action of this kind from the Swaraj party clearly proves that they say one thing and do just the other and that the only thing they value is what suits them and their interests best; but they do not care for order and justice as was pointed out by my honourable friend sitting on my right. Here I find section 146 and I have also before me the united demand of the zamindars who desire that the whole section should be deleted. The amendment proposed by Rai Sahib Lala Jagdish Prasad is a kind of compromise and, as it is so, I hope the House will accept it.

Pandit Nanak Chand: I rise to give my whole-hearted support to the amendment moved by my honourable friend the leader of the Swaraj party. I was surprised when I saw the amendment of the Hon'ble the Finance Member to this clause. I had expected that the Government would have not only the courage to stand by the provision of the Bill as reported by the select committee, as this clause was accepted by the select committee without any amendment, but to make it clear that no suits would be allowed to be proceeded with if they are filed during the current agricultural year. The Government's conduct in connexion with this Bill has been such as passes the comprehension of everybody. As has already been pointed out by my honourable friend, Mr. Pant, the Government first of all undertook to bring forward this measure with a view to give fixity of tenure on fair rents to insecure tenants in the province of Agra by proposing that life-tenancy should be conceded to non-occupancy tenants in that province. The very fact that the Government intended to bring forward a measure of this nature created apprehensions in the minds of many landlords, not only those landlord who are reputed to be or known to be hard upon their tenants, but even in the minds of those landlords who are lenient in their dealings towards their tenants, and the very fact that the Government wanted to bring forward this measure provoked them into taking steps against their tenants with a view to bring more area under their own control by ejecting the non-occupancy tenants. The result of this was, as has already been pointed out, that about three lakhs of ejectment suits were filed in the year 1924.

Khan Bahadur. Maulvi Muhammad Fasil-ur-Rahman Khan: This figure is incorrect.

Pandit Nanak Chand: I said "about". Under the instructions of the Government the Hon'ble the Board of Revenue issued an order to stay, not all these suits, but only some of these suits. They had a precedent of staying such suits in Oudh by their order when the Oudh Rent Act was being considered. There they had ordered that all notices of ejectment should be stayed, which were ultimately quashed. Here they suggested that in cases where the number of ejectment suits was normal, that is where the number of suits did not affect an area exceeding one-third of the non-occupancy area, the suits should be

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considered on their merits and disposed of. Accordingly a large number of tenants, who, but for this Bill, would not have been ejected, were ejected under the provisions of the Act up to the extent of one-third upon the basis of suits which were filed in the year 1924. Then the same apprehensions prompted many zamindars to file a large number of suits in the year 1925 and since they had the guidance provided to them in the circular of the Board of Revenue, this time they were more cautious in filing suits within these prescribed limits and these suits have either been disposed of or are being disposed of. Now what this amendment of the Hon'ble the Finance Member further proposes is that suits filed during the current agricultural year will be disposed of to the extent that has been provided in this amendment.

I can conceive to myself the result of this operation which began in 1924; I can conceive of cases of mahals and villages where the landlords got about one-third of their tenants ejected on the suits filed in the year 1924; and got another one-third of their tenants ejected on the basis of suits filed in the course of the year 1925 and the remaining one-third in such mahals is proposed to be ejected under the provision of the amendment of the Hon'ble the Finance Member. I ask the Hon'ble the Finance Member what will be the result of his Bill on such villages and on such mahals, and where will be the non-occupancy tenants who will be protected by the provisions of this Bill? I think the first—fruit of this Bill for such villages and for such mahals will be that the tenants who have been ejected will have to go begging for land for cultivation and they will not be admitted until and unless they offer to the zamindar a premium which he legitimately expects on the basis of competition offers for statutory tenancy, and then land will be given to him on as high a rent as the zamindar can exact on the basis of competition rents. The result will be that the tenant, instead of starting in normal conditions to cultivate his holding, will start as a bankrupt; he will be overweighed by the debt that he may have incurred to pay the premium, and he will find it very hard to pay the rent due to the zamindar when the instalments fall due and in course of time will in all probability be ejected. In most cases it is quite conceivable that the zamindar might adopt another device, and it is that, instead of giving the land to the tenants as statutory tenants, they might like to give it on the batai system. They might get it entered as *Khud-kusht* and the life of such tenants who will agree to cultivate on such terms will be most pitiable and unenviable. So the first—fruit of this Bill in the case of such mahals and such villages upon tenants, instead of giving them fixity of tenure at fair rents, will be considerably enhanced rents on their holdings accompanied by exaction of high premiums and on the top of them wholesale ejectments spread over a period of three years. I think, Sir, that the amendment of the Hon'ble the Finance Member will not lead to the safe-guarding of the interests of the tenants in whose interests this Bill has been brought forward, and I still hope that the good sense will ultimately prevail with my zamindar friends and they will not create extreme discontent among their own tenantry. I hope they will accept the amendment moved by the leader of the Swaraj party.

Khan Bahadur Mr. Muhammad Ismail: The honourable member for Naini Tal has spoken with his usual eloquence and force. He has

criticized the Government, or rather the Board of Revenue, for staying the ejectment suits by an executive order and he has found fault with the Government for moving this amendment and he considers that it is a greater mistake than the one committed by the Board of Revenue. Now, Sir, his argument would have carried much greater weight if on an earlier occasion, when a resolution was moved by Rai Sahib Jagdish Prasad to the effect that the order of the Board of Revenue should be cancelled and ejectment suits should proceed, he had come forward with this eloquent speech, and given us the support of his party. We would then have been able to believe that he really means exactly what he says. On the merits I want to point out one or two things. The honourable member for Naini Tal has opposed this amendment because after the passing of this Act it would not be proper to eject tenants. As a matter of fact, it will take some months before this Act becomes law. It will not become law until it has received the assent of the Governor General in Council. What are you to do in the meantime? If the Board of Revenue was wrong in staying suits, it will be wrong in continuing to stay them. This staying of suits could not continue for ever. Another point, and one which has not been considered by the member for Naini Tal, is this. This is a concession that we are making to the tenants. The tenant knew when he took the land that he took it on a year to year lease. He knew perfectly well that he could be ejected. Now by passing this law, he will get the concession of life tenancy, a privilege he was not entitled to under the old law. Has anybody any right to say that the concession should take a particular form, and if that particular form is not adopted it will be improper, unjust, unconscionable and so forth? Therefore, as far as the tenants are concerned, they have no legitimate grievance; they cannot say—you must pass this law from January 1, 1927, or January, 1928. Whenever they get this concession, they ought to be thankful for it, because they knew when they took the land that they were liable to ejectment at the sweet will of the landlord. It is suggested what will become of the poor ejected tenants who will be homeless? Well what happened to the tenants who were ejected last year, or the year before or the year before that? Were any number of them rendered homeless? It is simply a question of demand and supply, some tenants are ejected from one piece of land and they get another piece of land. Nobody is going to pay five hundred rupees by way of *nazrana* for land which is not worth that amount.

Voice of—"What about the bogey of fair rents"?

The bogey of fair rents means simply that you will not take six rupees instead of five. It is not possible that in the entire province exorbitant rents would be charged, rates which are beyond the means of the tenant to pay. My friend has forgotten that in this province 55 per cent. are occupancy tenants, about 22 per cent. of the land is in possession of the zamindars and only about 25 per cent. are life tenants. Then, my friends have apparently not carefully gone through the amendment itself. It is we, who have reason to object to that. Just see what it will come to in practice. In the last five years, if you have ejected ten tenants, then this year you can eject two tenants and another 15 per cent. which will come to either half or one-third of a tenant. Now, I am sure, this is not very much, and it won't dislocate all the tenantry in India, and I don't think my friends need be particularly anxious about it.

Mr. H. David : Let diamond cut diamond. There has been one law and another law comes over it and cuts it down. I should say, bearing in mind the enormous activity of my soft, tender-hearted zamindar friends, that something drastic was needed. When we have no less than three lakhs of ejectment suits in one year, then next year there will be another three lakhs. (A voice—"Question".) Anyhow I have higher authority from the leader of a party. When the zamindars have shown so much activity in blocking measures that were to be taken to better the condition of tenants, they cannot have any ground to ask for mercy or even for justice. Can it be called inherent or natural justice that zamindars should take it into their heads to turn out the poor tenants from their fields—thousands of tenants—to starve? They talk often of their tender-heartedness, goodness and generosity, and other good qualities, but what state of affairs does the filing of three lakhs of ejectment suits show? Therefore, I think, if there is any person who deserves no kind of consideration, it is the zamindars. We know that we have laws even that are enacted to have force not from the date of their commencement, but even from dates previous. That is an ordinary thing. Very recently in Germany a law was passed with reference to the possessions and property owned by the ex-Kaiser—that no action should be taken for a certain limit of time. So, I say, the only way to deal with the zamindars is to put forward this section so as to nullify all their efforts, which I may be allowed to call evil. I am in full sympathy with the amendment proposed by Pandit Govind Ballabh Pant. Whatever excuse zamindars may have had before the introduction of this Act, they cannot possibly have an excuse for being allowed to file ejectment suits against tenants before the Act actually comes into force, and, I think, if all such suits were dismissed *in toto* it would be only sheer justice. Therefore, I think, in the first place the amendment proposed by the Hon'ble the Finance Member should be incorporated, but along with the amendment put forward by Pandit Govind Ballabh Pant.

Khan Bahadur Mr. Muhammad Aslam Saifi : I rise to give my support to the amendment moved by Rai Jagdish Prasad Sahib. Sir, a little while ago the House must have listened to the speech of Mr. Fazul-ur-Rahman Khan when he moved the deletion of the entire clause. He used some very hard words against the Government, and I suppose he spoke in his representative capacity. The zamindar class have felt very bitter over the executive order, as it is called, of the Board of Revenue. My friend, the leader of the opposition, when he followed him made a very eloquent and impassioned speech which had as little logic in it as it was full of sentiment. He used a few very stinging remarks, addressed to the Government. So it is neither party which is satisfied with the action of the Government. What has incited this feeling either on these benches or on the opposition side? I would say *ایں مسئلہ آؤر نہ تست* the Government themselves are responsible for it. There is a famous remark of Addison's that much can be said on both sides. My honourable friend Pandit Govind Ballabh Pant has spent a good deal of eloquence against the Government for having brought up this amendment. I think I have great admiration for the Hon'ble the Finance Member for having moved this amendment when he realized that when certain ejectment suits were permitted under that

order there are other zamindars, who, if their ejectment suits were considered to be excessive according to their own estimation, have been precluded from having any benefit and should now be permitted to have it. I suppose that if the existing Act had allowed any abatement to be applied for by the tenants and if they had applied on a similarly wholesale scale, if the suits brought by the zamindars are nearly 2,50,000, which has been repeatedly pointed out by my friend, Mr. David, who is seldom precise in his figures—sometimes he says three lakhs and sometimes he says 30 lakhs—if such a number of abatement suits had been instituted by the tenants, then I suppose that my honourable friend, Mr. Pant, would have probably acted in accordance with the proverb that if speech is silver silence is golden. But, Sir, this is not the time to quarrel. We have gone through practically the whole Bill. I might say the camel has gone through the eye of the needle, only the tail is hanging on the other side. What is the good of calling the executive order of the Board of Revenue arbitrary or harsh or even an *ukase*. The Hon'ble the Finance Member has moved an amendment in which he permits the courts to go on an average of five years with regard to ejectment suits and even up to the limit of 15 per cent. This amendment has been amended by the amendment of Rai Jagdish Prasad Sahib which says that the courts may go on an average of ten years. There is one other point which had been raised by his amendment, and that is this—that the zamindars whose cases have been summarily dismissed or proposed to be dismissed should at least have refunded to them the amount spent on process-fee and court-fees. With these words, I support the amendment.

Khan Bahadur Hafiz Hidayat Husain : I have got an amendment standing in my name which is an amendment to the amendment of the Hon'ble the Finance Member ; but I will not move it. Instead, I will confine myself to supporting the amendment moved by my friend, Rai Jagdish Prasad Sahib.

I have heard with attention and interest to the eloquent speech delivered by the leader of the Swaraj party and the honeyed words of my friend the representative of Bulandshahr in opposition to the motion. I confess, Sir, that I have found no logic in either of those speeches to convince me that the action taken by the Government in putting in abeyance the ejectment suits on the dismissal of those suits as moved now by my friend has got anything like justice or reason behind it. My learned friend the leader of the Swaraj party has referred to precedents for such an action of the Government in the Oudh Rent Act. If the Government was wrong at the time the Oudh Rent Act was passed, is it any justification now that that wrong should be repeated? Two mistakes do not make one right. I do not think that there was any justice in that action then ; and I do not see any justice in it now. It has been stated over and over again on the floor of this House that this enactment is for the benefit of the tenant. I ask Government, Sir, if this enactment is not also for the benefit of the zamindar. If it is not for the benefit of the zamindar, then plainly say so, we will understand the position. But if it is also for the benefit of the zamindars, may I ask what have they got by this Bill? They stand here to lose. They have got nothing. On the contrary they have lost so much that it will be difficult, even in years and years to follow, to recuperate that loss.

[Khan Bahadur Hafiz Hidayat Husain.]

My friend the leader of the Swaraj party has stated that the Government having issued a circular putting in abeyance the ejectment suits ought to follow up its action to its logical end; it should stand by it. He has drawn a lurid picture of the condition of the tenantry to encourage the Government to do so. The said picture of tenants having one meal a day exists in his imagination; I who live in the countryside have yet to come across a tenant who lives on one meal a day, except that it be by habit. Then, Sir, I ask whether it is right, and I would challenge anybody to controvert me when I say it, that rights once obtained under any law cannot be abrogated by any subsequent law, unless and until a time-limit has been fixed for the exercise of those rights. If any time-limit has not been fixed, then no legislature can abrogate that law in derogation of those rights. Here things are still worse. The rights of a zamindar are curtailed, although the law conferring those rights is still a live law. I am aware of the existence of ordinances. But ordinances are brought into existence merely for the purpose of meeting certain emergencies. Once that emergency ceases to exist, the ordinances are removed. There is no analogy of an ordinance with agrarian law. If what I say is correct in law, then was the Government justified in stopping those suits? If they are not justified, then who is losing? It is not the tenant to lose. It is the zamindar who loses, and loses heavily; and where and how is the tenants' right impugned?

Then, Sir, I come to the figures which have been quoted by the Hon'ble the Finance Member. With regard to the land subject to ejectment it has been stated that the area is enormous. If so, what is the reason? Is it not a fact that the zamindars do not as a matter of fact eject their tenants unless either because the tenant proves himself uncongenial to the zamindar or because the land is required for his own cultivation or in order to prevent occupancy rights accruing. You come with this Bill to take away the zamindars' rights and confer occupancy or statutory rights on these tenants *en bloc* just as the period of their cultivation may be. Well, I for myself see no justice in this. And the least that the Government can now do is to accept the motion of Rai Jagdish Prasad Sahib. With these words I support the amendment of my friend Rai Sahib.

Hon'ble Sir Sam O'Donnell: I should have no objection to accepting the amendment of Rai Jagdish Prasad Sahib if he would agree, first, to the substitution of "a landlord" for "an individual proprietor"; and, secondly, if he would agree to retaining five years instead of ten years. I do not think that the alteration from five to ten years will make any difference so far as landlords are concerned. On the other hand it would make the necessary calculations extremely difficult. I hope he will agree to these two changes. If so, I could accept his proposal regarding the refund of process-fees.

Hon'ble the President: Would it not be better if the Hon'ble the Finance Member moved an amendment?

Mr. H. A. Lane: I beg to move that for the words "an individual proprietor" in the amendment of Rai Jagdish Prasad Sahib the words "a landlord" be substituted.

Hon'ble Sir Sam O'Donnell: For the rest we have, as has happened on more than one occasion, been attacked from both sides. On the one hand we have been told that we have violated all the principles of law and jurisprudence. On the other hand we have been told that if our amendment is carried it will neutralize *in toto* the benefits conferred on the tenants by this Bill. We have also been told that we are stupid. It may be, Sir, that we are stupid, but, at any rate, I think we can claim that we have been more consistent than some of our critics.

The honourable member for Naini Tal began by defending the orders of the Board of Revenue and referred to the precedent of the Oudh Rent Act, but as he warmed to his task he denounced those orders in very strong terms. I do not remember that when a resolution was moved on the subject of the Board's orders the honourable member for Naini Tal made any contribution to the debate except that he voted against the resolution. The honourable member for Naini Tal has said that the orders passed by the Board of Revenue were open to the just criticism that they were executive instructions. Then, if I have understood him aright, he said that suits should have been tried, but that the execution should have been stayed. If we, Sir, had taken that line of action, would it not have been open to precisely the same criticism which has been, rightly or wrongly, levelled against the actual orders passed by the Board of Revenue, and, one honourable member has reminded me, in addition have imposed unnecessary expense on both parties? Then he said that we ought to have introduced our Bill at an earlier date. We introduced it at as early a date as practicable. The Council will agree that we could not possibly have taken up this Bill during the Budget session. We did introduce the Bill at the end of the session, and it was referred to a select committee which sat after three or four weeks from the end of the Budget session. There has, therefore, been no unnecessary delay on our part.

The same honourable member has made an amazing statement—I deliberately say an amazing statement—that the acceptance of my amendment would neutralize *in toto* the benefits conferred by this Bill on the tenants. I cannot understand how the honourable member, for whose intelligence we all have great respect, could have committed himself to that statement. If he will refer to the figures showing the area from which ejectments have been ordered in past years, he will see that, if my amendment is accepted, the area from which tenants can be ejected will not exceed four per cent. The total area concerned is close upon six million acres and tenants cannot be ejected—I cannot give the exact proportion of course—from more than about four per cent. I am working on the figures of past years. Therefore, either the honourable member knew these figures and deliberately ignored them, or if he did not know them, then he might have taken the trouble of verifying the facts before making such a sweeping statement. In 1923-24, the area from which ejectment was ordered was 195,000 acres, and that included the *sir* area from which tenants were ejected. If you look at the figures you will find that ejectments have taken place from not much more than the normal area during the last two years. Thus it is perfectly clear that during the present year tenants cannot be ejected from more than four per cent. of the area that is held, and it is a very grave exaggeration to say that this amendment, if

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carried, would neutralize *in toto* the benefits conferred on tenants by this Bill. I do not suggest for one moment that the honourable member had any desire to misrepresent the facts, but I think that he made a serious error in making that statement. We, on the other hand, can at least claim that, however stupid we may be, we have been consistent throughout. We have taken our stand on the perfectly definite principle that normal ejectments should be allowed to proceed, and that only ejectments which are wholesale ejectments should be interfered with. That, at any rate, is a clear principle, and in my opinion it is a just principle. The honourable member for Bulandshahr has complained that we do not stick to the clause which was passed by the select committee. He evidently did not understand the explanation that I gave when proposing my amendment. I pointed out that the clause, as passed by the select committee, did not clearly provide for ejectments after June 30. Whatever the intention was, when we came to examine the words, we found that there was no clear provision for such ejectments.

Now, Sir, I come to the attacks from the other side. I cannot admit that this clause, as amended by me, is one for which there is no precedent. In the first instance, there is the precedent of the Oudh Rent Act. If the Oudh Rent Act differed in any respect from my present proposal, it differed only in that it was more drastic. It stopped a larger proportion of ejectments. Moreover, Sir, the instructions issued by the Board of Revenue were, in a broad sense, analogous to a moratorium. As we all know again and again a moratorium has been proclaimed and subsequently the necessary legislation has been passed. I think the honourable member for Shahjahanpur referred to the tenants holding land under seven-year leases. I do not see how these leases are concerned. The instructions issued by the Board of Revenue pointed out that there was no reason to postpone suits in the case of tenants holding seven-year leases. The same honourable member said that this proposal of ours would penalize the good landlord. Well, Sir, I put it to him—Is it the good landlord who goes in for wholesale ejectments? If it is so, I am afraid we shall have to revise all our ideas as to who should be called a good landlord and who should be called a bad landlord.

Lastly, Sir, it has been said that this amendment will prevent the landlord from getting land for his own cultivation. But is wholesale ejectment necessary for that purpose? Let us be quite frank. We all know that if wholesale ejectments take place, the land will not become *khudkasht*. It will be let to other tenants on higher rents or on the payment of a premium.

I submit that the proposal I have made is not only quite consistent, but perfectly fair. It does not interfere with the normal processes of ejectment. All that it does is to prevent wholesale disturbance and dislocation which it is not in public interest to allow.

Question, that clause 276, as reported by the select committee, stand part of the Bill, put and negatived.

Question, that the following amendment by Rai Jagdish Prasad, Sahib be made: "Provided that the process-fees and court-fees paid by the plaintiffs in such suits shall be refunded to them," put and agreed to.

Question, that the following words in sub-clause (2) be added at the end of line 5 :—“and order the refund to the plaintiff of the process-fees and court-fees paid by him in such suits,” put and agreed to.

Mr. Lane's amendment to Rai Jagdish Prasad Sahib's amendment, that the words “a landlord” be substituted for the words “an individual proprietor,” put and agreed to.

Question, that in sub-clause (2), proviso (a) in line 3, between the words “instituted” and “in the” insert the words “by a landlord,” put and agreed to.

Question, that the word “five” stand part of the clause, put and agreed to.

Mr. Lane's amendment that in Rai Jagdish Prasad Sahib's amendment “a landlord” be substituted, put and agreed to.

Question, that the words “by a landlord” be inserted between the words “instituted” and “after the thirtieth day of June,” put and agreed to.

Question, that the words “by him” be inserted between “instituted” and “during,” put and agreed to.

Hon'ble the President : To sub-clause (2) of the Hon'ble the Finance Member's amendment Mr. Pant has moved an amendment that the following be substituted therefor :—

“The court shall dismiss all suits instituted after the thirtieth day of June, 1926, under clause (a) or clause (b) of section 58 of Act II of 1901 that may be pending in the court of first instance at the commencement of this Act.”

Question put, that sub-clause (2) as proposed in the amendment of the Hon'ble the Finance Member, stand part.

The House divided : Ayes, 56 ; Noes, 20.

Ayes.

Hon'ble Sir Sam O'Donnell,
Hon'ble Lieut. Nawab Muhammad Ahmad
Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad
Sir Ivo Elliott
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yerke.
Mr. R. Burn
Mr. A. W. Fim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenröder.
Mr. H. O. Desanges.
Babu Khem Chand.
Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.

Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib
Raja Suryopal Singh.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Raj Narayan Pratap Singh.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan
Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Rao Sahib Abdul Hammed Khan.
Nawabzada Muhammad Ejaz Ali Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan
Dr. Zia-ud-din Ahmad.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Sheikh Masud-uz Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq
Husain.
Khan Bahadur Maulvi Muhammad Fazl-ur-
Rahman Khan.
Khan Bahadur Mr. Ashiq Husain Mirsa.

Ayes.

Khan Bahadur Munshi Siddiq Ahmad.	Raja Jagannath Bakhsh Singh.
Khan Bahadur Qauadhri Muhammad	Mr. Tracey Gavin Jones
Ka-Jid-ud-din Ashraf.	Dr. Ganesh Prasad.
Rai Bahadur Lala Mathura Prasad Mehrotra.	

Noes.

Mr. H. David.	Thakur Sadho Singh.
Babu Narayan Prasad Arora.	Pandit Jhanni Lal Pande.
Babu Sangam Lal.	Pandit Sri Krishna Dutt Paliwal.
Babu Mohan Lal Sakseena.	Pandit Yajna Narayan Upadhyia.
Babu Bhagwati Sahai Bedar.	Pandit Govind Ballabh Pant.
Thakur Manjit Singh Kathor.	Pa dit Har Govind Pant.
Pandit Nanak Chand	Babu Ram Chandra Sinha.
Thakur Shiva Narayan Singh.	Babu Sita Ram
Babu Nemi Saran.	Maulvi Zuhur-ud-din.
Chaudhri Badan Singh.	Qazi Habib Ashraf.

Hon'ble the President: To sub-clause (3), sub-clause (4) in the amendment of the Hon'ble the Finance Member, there are no amendments. The amended clause which is proposed to be inserted in place of clause 276 struck out is as follows :—

276. (1) When at the commencement of this Act proceedings in the court of first instance in any suit instituted under clause (a) or clause (b) of section 58 of the Agra Tenancy Act, 1901, at any time between the first day of July, 1924, and the thirtieth day of June, 1926, inclusive, are stayed under an order of the collector, the court shall dismiss such suit, and the order of the collector staying the suit shall not be questioned in any civil or revenue court :

Provided that the process-fees and court-fees paid by the plaintiffs in such suits shall be refunded to them.

(2) The collector may pass an order declaring the number of suits instituted by a landlord after the thirtieth day of June, 1926, under clause (a) or clause (b) of section 58 of the Agra Tenancy Act, 1901, relating to land in any specified mahal, to be excessive, and the court shall thereupon dismiss all such suits and order the refund to the plaintiff of the process-fees and court-fees paid by him in such suits :

Provided (a) that, in deciding whether the number of such suits is excessive, the collector shall have regard to the average number of suits instituted by the landlord in the five years preceding the first day of July, 1924, in respect of land in that mahal under the aforesaid clause of section 58 of the Agra Tenancy Act, 1901, and (b) that the number of such suits instituted by a landlord after the thirtieth day of June, 1926, shall not be deemed to be excessive unless it exceeds by fifteen per cent. the average number of such suits instituted by him during the aforesaid five years.

(3) Nothing in this section shall apply to a suit for the ejectment of a thekadar, a sub-tenant, or a tenant of land in which statutory rights do not accrue under the provisions of section 19.

(4) A tenant, a suit against whom has been dismissed under the provisions of this section, shall not be deemed to have acquired a right of occupancy at the commencement of this Act, unless he had acquired such a right at the date of the institution of the suit.

Question, that the above clause be inserted, put and agreed to.

The Council here adjourned for lunch.

After the recess—

Hon'ble the President : We have dealt with clause 276, I find that there are on the notice paper several new clauses.

Khan Bahadur Hafiz Hidayat Husain : Can I move a new clause now ?

Hon'ble the President : Yes.

Khan Bahadur Hafiz Hidayat Husain : I beg to move that the following new clause be added after the Bill :—

"No plea of payment of rent made by a tenant in a suit for arrears of rent or any suit in which payment of rent is in issue between the landholder and the tenant will be entertainable for any of the purposes provided in section 143 of the Act, unless and until the tenant has within the prescribed period brought a suit and obtained a decree for compensation as provided in section 142."

Now, Sir, in moving this amendment I do not want to screen from the House the feeling of disappointment that was felt by zamindar members when the Government accepted clause 143 that came before the Council the day before yesterday.

Hon'ble the President : If the honourable member's amendment is to circumvent clause 143 with which we have dealt already, that cannot be permitted.

Khan Bahadur Hafiz Hidayat Husain : This is, Sir, an independent provision. I simply referred to it to support my arguments regarding this new clause. Now, Sir, the object of this new clause is that the plea of payment made by a tenant will not be entertained for any purpose until the tenant has satisfied the provisions of clause 142. We are all aware that in suits for rent false pleas of payment are often raised, and owing to uncertainties of law they are sometimes maintained, at other times not entertained. Here in this Bill the landlord has been penalized under clause 143 to compensate the tenant if he refuses to give a receipt to him on payment of rent. I do not dispute the soundness of the principle embodied in that clause. I do say that every tenant is entitled to a receipt on payment of rent and every landlord should be compelled to grant a receipt, but is not the effect of section 143 to put the landlord under great disadvantage in suits brought by him for rent or in which payment of rent is in issue, if the tenants, instead of taking action under section 142, are encouraged to wait for their opportunity when it comes under section 143. Under section 142 the period provided is only three months. In section 143 the period is further extended. If a suit is brought by a landlord, the tenant need not go to the court at all to seek his remedy under section 142. The tenant can go when called by the landlord in a suit for rent. That is to say, the effect of the provisions of section 143 is to extend the period provided in section 142. The Council has accepted section 143, and the result of the decision is that the tenant will never take any steps under section 142. He can easily wait till his turn comes under section 143. If, Sir, this be the case, then my submission is that the tenant should be encouraged to resort to the provisions of section—that can only be done if he files a suit under section 142—and not be encouraged to wait for his opportunity when it comes under section 143. Unless and until a provision like this is incorporated in the Act, my submission is that not

[Khan Bahadur Hafiz Hidayat Husain.]

only will the landlord suffer and may lose his claim by a false plea that may sometimes be sustained by the revenue court, but the tenant will never be encouraged to resort to the provisions of section 142. Therefore it is absolutely essential, in order to justify the provisions of section 142, that a provision like the one I move should be embodied in the Act which will discourage the raising of false pleas by the tenants.

Khan Bahadur Mr. Muhammad Ismail: Sir, with your permission I would like to move an amendment to the amendment of my honourable friend Khan Bahadur Hafiz Hidayat Husain. It runs thus:—

"(1) A tenant to whom on payment of rent to his landholder a receipt in the prescribed form has not been given, may, within three months of the date of payment, demand a receipt from the landholder by registered post.

(2) If the tenant without reasonable cause fails to make such demand, he shall not be entitled to compensation under the provisions of section 143."

My amendment would serve the object which the honourable mover has in view. I have tried to put it in a more definite form. A provision of this kind is absolutely necessary in this Act and the omission might lead to very serious difficulties. It is not intended to reopen the provisions of section 142 or 143 which have already been passed by the Council and which are binding upon us, but section 143 as it stands does not protect the zamindar. Section 143 is meant for the protection of the tenant, who is entitled to demand a receipt, if a receipt is not given, and the court has authority to allow a certain amount by way of penalty. On the other hand, there is no reciprocal clause in the Bill to protect the zamindar, and if this amendment is allowed and this provision finds a place in the Act, the zamindar will be protected and it will be open only within a certain prescribed period to the tenant to set up as a defence the plea that he has paid the rent and that he has not been given the receipt for it.

I hope the House will accept my amendment.

Khan Bahadur Shaikh Masud-uz-Zaman: I think that the amendment proposed by Khan Bahadur Mr. Muhammad Ismail is really intended to protect the landlord from being treated very harshly in cases where, because of a certain trifling mistake or because of a false allegation or neglect on the part of the landlord, it may be possible for the tenant to prove that he has paid his rent. The fact is that most of the landholders leave their management in the hands of. . . .

Hon'ble the President: I am afraid I cannot have a repetition of the debate on clause 143.

Khan Bahadur Shaikh Masud-uz-Zaman: No, Sir, I am not referring to clause 143. I am only saying that if the existing. . . .

Hon'ble the President: If the honourable member does not say that, what else is he saying? I should like to advise the honourable member that if he has nothing new to contribute, he had better resume his seat.

Khan Bahadur Shaikh Masud-uz-Zaman: I will resume my seat.

Pandit Govind Ballabh Pant : I feel that we have practically every one of us to hold our tongue over this clause, for if we do not refer to 143, I do not know what else is there that this clause refers to. I do not care to raise any point of order, as, I think the Hon'ble the President can deal with these matters much better than any one of us here. So far as this clause itself is concerned, he will pardon me for saying that it is only a circumventive way of deleting clause 143 from this Bill.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan : Oh, no.

Pandit Govind Ballabh Pant : The Hon'ble the Nawab Sahib says "Oh, no." I will explain it to him why it is so. The clause says that if a tenant does not give notice within three months to his landlord that he has not got a receipt, then he will not be entitled to seek protection under section 143. Well, then, within these three months two remedies are open to the tenant: either he may put in an application under section 142 before the tahsildar and seek from the landlord compensation to the extent of double the rent, or within three months he may serve a registered notice in order to keep for himself the opportunity of resisting a false claim that may be brought against him later. Well, a tenant who has apprehension that his landlord is going to bring a false suit against him will not be a man who will, firstly, be satisfied with the payment of rent without caring to get a receipt. Secondly, a tenant who is anxious to get a receipt and fails to get it, if the remedy under section 142 is open to him and he can apply to the tahsildar and thereby get double the compensation, will not be foolish enough, in spite of the danger and risk that he sees, not to put in an application before the tahsildar, but would send a registered notice through the post office. There can be only two reasons why a tenant should refrain from taking action under section 142: either he does not want to offend his zamindar. If he does not want to do so, he will as much refrain from sending a registered notice as from putting in an application. Or he has no apprehensions whatsoever from his zamindar. In either case he will refrain from taking action under section 142 as well as from taking action under this proposed clause, but if he feels that he must take action, then he will take it under 142. I do not want to develop my arguments further. I only want to answer the question put by the Hon'ble the Nawab Sahib. I only say that we could very well have honestly embodied 143.

Hon'ble Sir Sam O'Donnell : I have no objection to urge against the amendment proposed by Khan Bahadur Mr. Muhammad Ismail. The effect of it will not be to prevent a tenant from claiming that he has paid the rent. That of course he can always claim. The only effect will be that if he does not give notice, he will not be entitled to claim double the compensation. I admit that in some cases it may conceivably happen that the tenant refrains from sending a notice because he never contemplates that a false suit will be brought. On the other hand, it has been urged, that if there was not a provision of this kind false claims might be multiplied which is very undesirable. Looking at it from that point of view, on the whole the balance of argument seems to be in favour of the amendment of Khan Bahadur Mr. Muhammad Ismail.

Pandit Nanak Chand : I do not understand that if the tenant is so dishonestly inclined, what is there to prevent him under the provisions

[Pandit Nanak Chand.]

of my friend's amendment from serving the zamindar with a registered notice without having paid anything. I will only say this much that for dishonest people we cannot provide all safeguards here and we have to depend upon harmonious relations only for stopping of such frivolous and dishonest objections, either on the part of one party or of another.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan: My point is whether the honourable member has supported the amendment or he has opposed it. He did not say anything in clear terms.

Hon'ble the President: There are some things which have to be understood.

Rao Sahib Abdul Hameed Khan:

— جناب والا —

میں اس بحث پر کچھ عرض کرنا نہیں چاہتا تھا لیکن میرے آنریبل دوست پنڈت نانک چند صاحب کی مختصر تقریر نے میرے قلب پر ایسا اثر کیا کہ مجھے کچھ عرض کرنے کی ضرورت محسوس ہوئی۔ حالانکہ پنڈت جی کی تقریر مختصر تھی لیکن اُس میں دو خاص اصول بیان کیئے گئے تھے جو میری سمجھ میں نہیں آئے۔ پہلی بات ہے، میں نے سنی وہ یہ تھی کہ اُنہوں نے انگریزی میں فرمایا If he gives a registered notice without paying anything میں نے یہ سمجھ میں نہیں آیا کہ ایسا کیونکر ممکن ہے اور محکمہ ڈاک بغیر کچھ ضروری فیس کی ادائیگی کے رجسٹرڈ نوٹس کیونکر قبول کر سکتا ہے۔ دوسری بات جو آپ نے فرمائی وہ یہ تھی کہ Dishonesty بددیانتی کا پورا پورا علاج یہ کونسل House نہیں کر سکتی۔ یہ سنے کے بعد فطرتاً مجھے خیال پیدا ہوا کہ یہ بھی غیبت ہے کہ ہمارے پنڈت جی Legislative Assembly کے میمبر نہیں ہیں در نہ Penal Code تعزیرات عذ وغیرہ سب کے بالائے طاق رکھ دیئے جانے کی سفارش فرماتے اور بددیانتی اور دوسرے جرائم کے لیئے دنیا میں کوئی علاج سوائے خدا کے کسی کے پاس نہ ہوتا۔ میں سمجھتا ہوں کہ پنڈت جی نے اپنے اس موجودہ رویہ کو بحث کے موقع پر اچھی طرح سے نہیں نبھایا اور پوائس ڈیپارٹمنٹ کی مطالبہ (Demand) کو اُنہوں نے *In toto* قطعی خارج کرانے کے لیئے کوشش نہیں کی اور اُس بڑی رقم کو جو پولیس جیسے زبردست محکمہ پر صرف ہوتی ہے نہیں بچایا تو کیا وجہ ہے کہ وہ ایک معمولی سی ترمیم کی مخالفت کرتے ہیں جب اس قانون میں دو سطر سے زیادہ جگہ نہیں گھیریں۔۔۔ جناب والا اُس کے ساتھ ہی میں یہ بھی عرض کروں گا کہ ہمیں یہ یاد رکھنا چاہیئے کہ ہمارا کونسل کے اندر اور کونسل کے باہر ایک بھلا آدمی ہونے کی حیثیت سے یہ نہایت ضروری فرض ہے کہ ہم جہاں تک ہوسکے تمام بددیانتیوں کے ارتکاب کے روکنے میں اُن تمام دفتروں اور مشکلات کا مقابلہ کریں جو اس میں داخل ہوں اور اُس کی ہر طرح سے کوشش کریں کہ بددیانتی اور بددیانتی کا ارتکاب نہ ہوسکے۔ میں سمجھتا ہوں کہ اس کے خلاف کوئی تقریر کرنا اس (مجمع) ہؤس کی عزت کے منافی ہے اور اس (مجمع)

ہوس کے کسی ممبر کو نہیں چاہیئے کہ بد اخلاقی اور مقدمہ بازی کے جانب
رجہاں میں قوتی کا حیلہ ہو اگر کوئی صاحب اس کے خلاف کہتے ہیں تو حقیقت
میں ہم سب کی بے عزتی (Insult) کہتے ہیں *

Khan Bahadur Hafiz Hidayat Husain : I have nothing more to add. I accept the amendment moved by my friend on my left

Hon'ble the President : A new clause is sought to be added by Khan Bahadur Hafiz Hidayat Husain to which the following amendment has been moved by Khan Bahadur Mr. Muhammad Ismail :—

"(1) A tenant to whom on payment of rent to his landholder a receipt in the prescribed form has not been given, may, within three months of the date of payment, demand a receipt from the landholder by registered post.

(2) If the tenant without reasonable cause fails to make such demand, he shall not be entitled to compensation under the provisions of section 143."

Question, that this proposition of Mr Muhammad Ismail be added as a new clause to the Bill, put and agreed to.

An amendment standing in the name of Thakur Sadho Singh, (see below) was called.

Hon'ble Sir Sam O'Donnell : This is put down as a proviso to clause 226 (2). The honourable member has lost his opportunity to move it. It is numbered 9 on yesterday's list. It is not on today's list.

Hon'ble the President : The amendment is number 9 on yesterday's list. Is there any objection to its being moved now ?

Hon'ble Sir Sam O'Donnell : Yes, certainly. It ought to have been moved when clause 226 was taken. It does not come in here. The honourable mover has himself put it down as a proviso to 226 (2).

Hon'ble the President : Notice of this amendment was given in time. It is at best a technical objection. A new clause has been already discussed and passed at a place at which it did not quite fit in ; perhaps there was no objection to it. I think that this might be discussed on its merits. I hope that there will be no objection now.

Thakur Sadho Singh : I beg to move that :—

"All collections of rent made by a lambardar or other collecting co-sharer, within an agricultural year shall ordinarily be deemed negligent if they amount to less than 80 per cent. of the gross assets, and a lambardar shall be entitled to an allowance of 10 per cent. of the gross assets for his responsibility for making collections and paying revenue, besides other kinds of village expenses, if any :

" Provided that a lambardar who has failed to pay the profits of co-sharers within six months of the date on which they fall due without reasonable excuse shall forfeit his lambardari allowance for such sums."

Those zamindars and lawyers who have experience in mahals will find that most suits are unnecessary on account of the very uncertain provisions of the existing section. Moreover, lambardars get a very small allowance of 5 per cent. on land revenue, and for that reason they cannot be held responsible for adequate collections. None of them can

[Thakur Sadho Singh.]

possibly collect everything, as even the court of wards have to lose about fifteen per cent. of the gross assets on collections. Moreover, a good deal of time and money is wasted in going to law simply to prove negligence. There is another disability that if a lambardar fails to pay up his collections within six months from the date they fall due he forfeits his lambardari allowance for such sums. This provision will, I think, very seriously reduce the number of suits altogether, and only the items about which there will be real difficulty in collection shall be shown in arrears. I think from all points of view if this clause is inserted in the Bill unnecessary litigation among hissadars will be reduced substantially, and I hope the House will agree to it.

Khan Bahadur Hafiz Hidayat Husain: I have considered the amendment of my friend, Thakur Sadho Singh, but I find considerable difficulty in accepting it. In several villages we find that at times of scarcity the collections are much lower than 80 per cent., and the result of the amendment, if accepted, would be that in times of scarcity the lambardar will be considered negligent if he collects less than 80 per cent., and a suit will be decreed against him on the gross rental. Now, Sir, we have amended the old section which used to be sections 264 and 265. Under that old section the law was that a decree could be passed against a lambardar not only on the collections but also on sums plaintiff may prove to have remained uncollected owing to negligence.

Voice "of section 164."

Yes, it is sections 164 and 165. Well, Sir, under the present law the burden of proof has undergone some change. If the amendment of my friend made any allowances for times of scarcity it would not have been difficult to accept it, but the amendment as it runs makes no allowance for times of scarcity and is therefore unacceptable. I think 60 per cent. may be enough in times of scarcity, and 80 per cent. may not be enough in times of prosperity. I am afraid the wording of this amendment is not happy and is unacceptable.

Hon'ble Sir Sam O'Donnell: I think the Council will have no hesitation in coming to the conclusion that this is an amendment which should not be accepted. It seems to me absurd to lay down a cast-iron rule like this that unless the collections amount to 80 per cent. of the gross assets a lambardar is to be deemed negligent. All sorts of circumstances may have operated to prevent him from making full collections, and it has been repeatedly held by courts that the mere fact that the whole amount was not collected does not prove negligence. It is contrary to all principles of justice to lay down a rule of this kind. The circumstances of each case have to be considered. The upshot of this amendment would be that it would be difficult to persuade people to take the post of lambardar at all.

Thakur Sadho Singh: May I tell the House that I have moved this clause after consulting a very large number of *hissadars*, co-sharers and lambardars among whom I myself live. Everybody has found it to their advantage that such a section should be provided in the law. They do not want too much hair-splitting. Even if ordinarily the collections fall below 80 per cent. a lambardar will not lose anything. At present he gets only 5 per cent. on revenue. According to this clause he gets 10 per cent. on the gross assets. That will make him

something like a thekadar. Moreover, most of this litigation on profits is nothing short of hair-splitting and sheer waste of money. As for scarcity and bad seasons the clause itself provides that the collections shall ordinarily be 80 per cent. There is a sort of penalty that he shall forfeit the lambardari allowance if he does not pay the profits to the co-sharers within six months. For this reason he will make payments to the co-sharers more readily. In reality this large number of suits for profits benefit the legal profession and others, and can be avoided safely. The annual collections are concealed, because there can be no hard and fast rule for going into minor details in a law court. I have found that a large number of lambardars have ruined themselves by becoming lambardars, not because they have got to pay more than they have collected, but because they did not pay the co-sharers under the misapprehension that they need not have to pay them, by saying that such and such items were not collected and that the tenants, remained in arrears. It is for these reasons that many of them have ruined themselves. I know a large number of such lambardars. It is always said in my place, that a co-sharer has lost his zamindari and a lambardar has lost himself. It is a proverb there. I can claim to have as much experience in this matter as anybody here, if not more. I feel very keenly about it. I hope my zamindar friends will think twice before opposing it. It is all to the interests of both co-sharers and lambardars. It is such hair-splitting provisions of the law that are ruining the zamindars more than many other things. I doubt if there is anything that can be seriously urged against the reasonableness of this clause from any point of view, because ordinarily he will have to collect 80 per cent. Moreover, 80 per cent is not a big sum. If we take the assets to be Rs. 200; then Rs. 110 will be the revenue; he will have to collect Rs. 60 more. Rs. 60 out of Rs. 100 of the profits of the co-sharers is very small. I have considered every single fact in detail and I again appeal to the House that the ordinary uncertain rules of the chapter on profits should be superseded by this clause.

Hon'ble Sir Sam O'Donnell: I just wish to point out that the proper procedure has already been laid down quite clearly by the courts. They say that the proper procedure is to ask the lambardar to file the account books and lists of tenants showing those who have paid their rents, those from whom the rents have not been realized with reasons for not realizing them; and the other party will then examine the accounts and show if there is misconduct or negligence on his part. It is absurd to have a cast-iron rule like that proposed. That is a most unreasonable suggestion.

Question put, that the proviso be added.

The House divided: Ayes, 19; Noes, 41.

Ayes.

Babu Narayan Prasad Awara.
 Babu Sangam Lal.
 Babu Mohan Lal Sak-ena.
 Thakur Shiva Narayan Singh.
 Rai Amba Prasad Sahib.
 Babu Nemi Sarau
 Chaudhri Badan Singh.
 Thakur Sadho Singh.
 Pandit Jhanni Lal Pande.
 Pandit Sri Kri-hna Dutt Paliwal.
 Pandit Yajna Narayan Upadhyia.

Pandit Govind Ballabh Pant.
 Pandit Har Govind Pant.
 Babu Ram Chandra Tinha.
 Babu Sita Ram.
 Maulvi Zahur-ud-din.
 Khan Bahadur Chaudhri Amir Hasan Khan.
 Khan Bahadur Saiyid Muhammad Ashiq Husain.
 Qazi Habib Ashraf.

Noes.

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut Nawab Muhammad Ahmad
 Sa'id Khan.
 Hon'ble Rai Rajeshwar Bali
 Hon'ble Thakur Rajendra Singh.
 Hon'ble Nawab Muhammad Yusuf.
 Mr. G. B. Lambert.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Elliott
 Mr. P. H. Tillard.
 Mr. H. A. Lane
 Mr. R. L. Yorke.
 Mr. R. Burn
 Mr. A. W. Pim.
 Mr. B. J. K. Hallows
 Mr. F. L. Norton.
 Mr. H. G. Bilton.
 Mr. R. J. G. Dodd
 Colonel A. W. R. Cochrane
 Mr. A. H. Mackenzie
 Mr. M. F. P. Herchenroder.

Mr. H. C. Desanges.
 Mr. H. David.
 Babu Khem Chand
 Chaudhri Jaswant Singh.
 Lala Babu Lal.
 Thakur Rajkumar Singh.
 Rai Bahadur Babu Ram Nath Bhargava.
 Raja Suryapal Singh.
 Rao Sahib Kunwar Sardar Singh.
 Raj Narayan Pratap Singh.
 Rai Sahib Babu Dip Narayan Roy.
 Bhaya Hanumat Prasad Singh.
 Khan Bahadur Mr. Muhammad Aslam
 Saifi.
 Rao Sahib Abdul Hameed Khan.
 Nawabzad Muhammad E'jaz Ali Khan.
 Mr. Muhammad Ismail Ali Khan.
 Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Mr. Muhammad Ismail.
 Mr. E. M. Souter.
 Mr. Tracey Gavin Jones.

Pandit Yajna Narayan Upadhyaya: I beg to move the following amendment:—“That the provisions of this Act will not affect the heritable and transferable leases granted by the landlord for the construction of building, groves, and agriculture for valuable consideration, executed before the commencement of this Act.”

Hon'ble Sir Sam O'Donnell: On a point of order, Sir. This seems to be out of order; This refers to leases of agricultural land for valuable consideration. Surely that ought to come under the clauses that have been dealt with under leases, statutory rights, and so on.

Hon'ble the President: If the point of order is that it is misplaced, that is a different thing. Is there anything in it which is inconsistent with or beyond the scope of the Bill?

Hon'ble Sir Sam O'Donnell: We have already passed clause 19 which refers to seven-year leases and this will say that nothing in this shall affect those leases. It is also against the provisions as regards grove-lands.

Hon'ble the President: Do I understand that this is inconsistent with section 19?

Hon'ble Sir Sam O'Donnell: Yes, it is inconsistent with section 19 and the chapter about grove-lands. We have dealt with groves already.

Hon'ble the President: We discussed a new clause moved by Hafiz Hidayat Husain. No point of order was then raised.

Hon'ble Sir Sam O'Donnell: I did not rise then. But it seems to me that this particular amendment goes right against the provisions that we have already passed.

Pandit Yajna Narayan Upadhyaya: I do not think this will go against the provisions we have already passed. The provisions of this Act will not affect leases granted for this purpose. There is ample provision in the law to grant such leases. Under the Transfer of Property Act such leases are granted throughout the length and

breadth of the provinces. Under the old Tenancy Act, too, leases can be given. So, I submit, that this is a saving clause. The object of this is that those leases which have been granted previous to the passing of the Act should remain.

Hon'ble Sir Sam O'Donnell : I submit, Sir, that it contradicts the fundamental provisions of the Bill already passed regarding lease of agricultural lands, and groves.

Hon'ble the President : It is difficult for the Chair to decide such a point on the spur of the moment. May I have the benefit of the advice of the Legal Remembrancer ?

Khan Bahadur Shaikh Masud-uz-Zaman : Can I say a word, Sir ?

Hon'ble the President : A point of order is not open to discussion. There was some interval here.

Hon'ble the President : I have taken the advice of the Legal Remembrancer and I must say that the Chair is in a difficult position in this matter. It cannot offhand decide which provision is inconsistent with another provision that the House has already passed. The only thing to do is to refer the matter to the Legal Remembrancer who is also the legal adviser of the Government. I know it is difficult for the Legal Remembrancer to give advice which sometimes may be contrary to the opinion of the Government. But the Chair has no independent legal adviser and has therefore to fall back on the advice of the Legal Remembrancer. The Legal Remembrancer thinks that this amendment is inconsistent with what the House has already passed. I agree with him. Therefore this amendment can not be moved.

The Hon'ble the President : We now come to the first schedule.

THE FIRST SCHEDULE.

(See section 1.)

AREAS EXCEPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

1.—The Kumaun division, consisting of the districts of Almora, Garhwal, and Naini Tal [*exclusive of the pargana of Kashipur and of the following villages in the Tarai sub-division* :—

<i>Name of peshkari.</i>				<i>Name of village.</i>
Bazpur	...	...	...	Kankata. Kuwa Khera. Rajpura.
Kichha	...	...	...	Anjanian. Piru Nagla. Durau.

Name of peshkari.

Kilpuri

...

...

...

Name of village.

Bijti.

Bitha Akbar.

Haldua.

Malpuri.

Matha.

Nakatpura.

Pipalia Nathu.

Sabapur.

Sainjana.

Sarkara].

II.—The portion of the Mirzapur district lying to the south of the Kaimur range.

III.—The tract of country known as Jaunsar-Bawar in the Dehra Dun district.

Pandit Govind Ballabh Pant: I beg to move that in the first schedule between "Kashipur" and "and" a comma should be inserted and the following be added, "the villages owned by Government in the Tarai and Bhabar Government estates." The effect of my amendment will be that the provisions of this Bill will be extended to the Government estates in so far as the villages owned by the Government are concerned. Sir, having taken part in the deliberations of this Bill in its various stages in this Council and outside, I felt that in order to demonstrate my *bona fides* I must ask the honourable members to extend its operation to those particular parts with which I am concerned, so that it may not be supposed that all the interest that I was taking in it was of an irresponsible character. I propose, therefore, that the benefits of this Bill, including of course with them the liabilities which this Bill imposes on the persons affected by it, should be extended to the villages owned by Government in the Government estates. I have no doubt that the Government will agree with me and will not oppose my amendment. I do not, therefore, make any further remarks.

Hon'ble Sir Sam O'Donnell: As the Council knows, we announced some time ago that we intended to confer permanent heritable rights or fixity of tenure on the tenants in the Government estates of the Tarai and Bhabar. We have actually drafted rules which, in all essentials, give to those tenants occupancy rights. But we have drafted them in a somewhat different form which is suitable to the special conditions of that area. It must be remembered that the Tarai and Bhabar is an exceptional area: cultivation in all parts of that area is not stable: village sites are sometimes deserted and the tenants move elsewhere. We have actually been engaged in trying to get the tenants into more healthy sites. We are going to take up anti-malarial projects in that area. We are trying to get the tenants out of unhealthy tracts and put them in healthier tracts. It very often happens that tenants go to the Tarai and Bhabar and settle and then move leaving their holdings. Therefore it is better to have their rights secured in a form more suitable to the actual conditions of the tract than in the cast-iron form of the Bill. We are quite ready to show those rules to the honourable member for Naini Tal, and we will consider any suggestion that he may

make. Those rules have been gone through by the Commissioner and several other officers, and in substance they confer on every tenant much more than he would get by the mere operation of this Bill. They confer upon them heritable rights. I hope the honourable member will be satisfied with this assurance. We have every desire to give fixity of tenure: in fact the difficulty in the Tarai and Bhabar is to get tenants. Nobody wants to get rid of them. Even if we never extend this Act to the Tarai and Bhabar, they will always have practical security of tenure. In order, however, to meet the point that their security of tenure normally depended on the will of the Government, we are prepared to make statutory rules, which will give them this right in a form more suitable to the particular locality.

Babu Nemi Saran : I move that the following be added after "estates" in the amendment of Pandit Govind Ballabh Pant :—

"excepting the villages mentioned in the annexed list.

Pargana Bazpur.

Serial number.	Name of village.	Serial number.	Name of village.
1	Bajawala.	14	Hazira.
2	Bannakhera	15	Haripura.
3	Bannakhera Sani.	16	Harsan.
4	Banskhera.	17	Khamari.
5	Banskheri.	18	Maindaya Hattoo.
6	Baraihani.	19	Rajpura No. 1.
7	Bhainsia.	20	Ratapuri.
8	Bhajwanagla.	21	Somalpuri.
9	Bhikampur.	22	Sheopuri.
10	Bijai Rampura.	23	Thapaknagla
11	Chanakpur.	24	Kelabandwari.
12	Gularia Gobra.	25	Faridpur.
13	Gulzarpur.		

Pargana Gadarpur.

1	Alakhedi.	9	Madnapur.
2	Andkhera.	10	Maholi Jungle.
3	Beria.	11	Mukandpur.
4	Bari Rain.	12	Nandpur.
5	Buxaura.	13	Pipalia.
6	Khanpur Pachham.	14	Kopa.
7	Khanpur.	15	Jafarpur.
8	Kulha.	16	Gandarpuri.

North of Kashipur.

1	Kamdebpur.	6	Kandala.
2	Beria.	7	Birpur Lachi.
3	Lalitpur.	8	Birpur Tara.
4	Karailpuri.	9	Rajpur.
5	Thari.	10	Pipalsana.

In Khushalpur circle.

1	Khushalpur.	3	Lampur Lachi.
2	Lampur Moti	4	Shahbazpur.

Rao Sahib Abdul Hameed Khan :

جناب والا —

میں اپنے آپریبل اور معزز دوست پنڈت گوبند بلیہ، پنڈت صاحب کی اُس تہمید کے متعلق اپنی رائے ظاہر کرنا چاہتا ہوں۔ جناب والا۔ شروع مباحثہ بل سے آج تک میں نے یہہ بڑے غور سے دیکھا ہی کہ کاشتکار کے لیئے مدت میعاد کے اضافہ اور تیقن کا جہاں کہیں سوال آیا ہی تو ایسے کاشتکاران کے متعلق جو زمیندار کی زمینوں ہوتے اور جوتے ہیں کوئی مخالفت اِس ہؤس میں گورنمنٹ کی طرف سے نہیں کی گئی لیکن جب ایسے کاشتکاران کا سوال آتا ہی جو بدقسمتی سے باخوش قسمتی سے گورنمنٹ کی زمین جوتے ہیں اور اُن کا کوئی زمیندار سوائے گورنمنٹ کے نہیں ہی تو scientific رجحانات گورنمنٹ کی طرف سے اُن کے خلاف پیش کردیئے جاتے ہیں مثلاً میلیریا malaria وغیرہ جس کی بنا پر کہا جاتا ہی کہ کاشتکاران کو لمبی مدت کے لیئے زمین دیا جانا مشکل ہی۔ جناب والا۔ میں اِس کے متعلق یہہ اُصولاً عرض کرنا چاہتا ہوں کہ کاشتکار کاشتکار ہی خواہ وہ زمیندار کا ہو یا براہ راست گورنمنٹ کا۔ میں نے اسکول میں یہہ پڑھا تھا کہ one man's food is another man's poison لیکن مجھے یہاں پہنچ کر اُس کی صحت اور صداقت معلوم ہوئی۔ میں نے اِس زمانہ کونسل میں دیکھا کہ جو چیز ایک کاشتکار tenant کے لیئے نہایت ضروری اور لازمی indispensable ہی وہ دوسرے کاشتکار tenant کے لیئے موت کا باعث بنلائی جاتی ہی۔ اگر آپ غور کریں گے تو یہہ حالت ترائی اور بہار کے لیئے ہی نہیں ہی بلکہ اُن کاشتکاروں کے لیئے بھی ہی جو بدقسمتی سے گنجا اور جمنا نہر کے قریب بہت لمبی جوڑی سرکاری زمین جوتے ہیں وہاں بہت سی زمین کاشتکاروں کے لیئے موجود ہی۔ کاشتکاروں کو ۶-۶ سال کے لیئے پتہ دیئے جاتے ہیں لیکن اُس کو حق حین حیاتی یا دخیلکاری نہیں دیا جاسکتا اور یہہ کہہ دیا جاتا ہی کہ ممکن ہی کہ اُس زمین کی آٹے چل کر گورنمنٹ کو ضرورت پڑ جائے لیکن میں دریافت کرتا ہوں کہ کیا ایک زمیندار ان کا ہی ایسا مستغنی اور بے نیاز طبقہ دنیا میں ہی کہ اُسے کبھی اپنی چیز کی بھی ضرورت ہونے کا احتمال و امکان نہیں۔ میں نہایت افسوس کے ساتھ اور اگر خلاف قانون کونسل Unparliamentary نہ ہو تو نہایت درجہ غصہ کے ساتھ صدارے احتجاج بلند کرنا ہوں اور کہتا ہوں کہ یہہ بڑا ظلم ہی کہ ہمارے کاشتکار اچھی طرح سے رہیں اور گورنمنٹ کے کاشتکار جو ہماری اور کاشتکاروں کی دوزوں کی گورنمنٹ ہی اتنی بڑی حالت میں رہیں میں اِس موقع پر یہہ عرض کرنا چاہتا ہوں کہ نہر کی زمین جو کاشتکاروں کو ۶-۶ سال کے پتہ پر دی جاتی ہی اُن بد نصیبوں کو بھی حق حین حیاتی دیا جائے۔ نہر بہر حال چاہے درخت نہیں ہی جو ایک جگہ سے اُٹھ کر دوسری جگہ تبدیل کرنا پڑے۔ گورنمنٹ کی یہہ شرارتیں دراصل حقیقت کا انکشاف کرنے والی ہیں۔ من خوب می شناسم پیمان وارسا وا۔ میں اچھی طرح سے گورنمنٹ کی نیت کو جانتا ہوں اور اچھی طرح سمجھتا ہوں کہ یہہ بل Tenants

کاشتکار کی بہبودی کے لئے نہیں لایا گیا ہے بلکہ گورنمنٹ کا اصلی منشاء یہ ہے کہ زمینداروں کو برباد کر کے اپنے دشمنوں کی خوشنودی حاصل کرے ورنہ کاشتکار کاشتکار سب ایک ہی ہیں خواہ وہ کسی حصہ کا ہو - ٹرائی بھار کا ہو یا گنگا اور جمنا کی انہر کا ہو - میں نہایت انسوس کے ساتھ اور جیسا کہ میں پہلے عرض کر چکا ہوں غصہ کے ساتھ عرض کرتا ہوں کہ گورنمنٹ ہم کو بیوقوف نہ سمجھے ہم جانتے ہیں کہ وہ ہم کو برباد کرنا چاہتی ہے اور اُس کے ساتھ ہی کاشتکار کو بھی کچھ نہیں دینا چاہتی ہے ابھی میں ایک ترمیم گنگا اور جمنا کے کاشتکاروں کے لئے حق حین حیاتی دینے جانے کے متعلق پیش کرنا چاہتا تھا بدقسمتی سے ترمیم پورے اڑتالیس گھنٹہ پہلے نہیں بھیجی گئی تھی بلکہ پندرہ منٹ کی دیر میں تھی اڑتالیس گھنٹہ پورے ہوں لیکن اس عظیم الشان گورنمنٹ کے رکن نے جو کاشتکاروں کے مدافظ اور وکیل ہوئے کی مدد ہی اور جس کی وسعت کے متعلق کہا جاتا ہے کہ اس میں اُس کی سلطنت میں آفتاب غروب نہیں ہوتا ہے کہڑے ہو کر اعتراض کیا اس سے زیادہ ذاللت اور کیا ہوسکتی ہے - گورنمنٹ کو اس ترمیم کا نہیں تو اس ترمیم پر مباحثہ کا خیر مقدم کرنا چاہیئے تھا اگر گورنمنٹ ایماندارانہ طور پر اپنے کو حق بجانب سمجھتی ہے تو اُس کو ایک موقع تھا کہ مجھے قائل کر کے اپنا پوزیشن صاف کرتی - اسی قسم کے مکر اور فریب سے ہم پر حکومت کی جاتی ہے *

Pandit Govind Ballabh Pant: 'The Hon'ble the Finance Member has stated that he contemplates conferring on those in essentials the rights of occupancy tenants. If my amendment is adopted, it does not go beyond that. He has further told us that the difficulty in the Government estates is to get tenants and not to meet any competition among them. Well, it has always been my view that the Government would be very well advised in conferring proprietary rights on the tenants who cultivate land in the Government estates, as that would probably have attracted tenants towards parts which are otherwise being wasted today and are not serving any useful purpose at all. But if the Hon'ble the Finance Member at any time proposes a Bill in order to amplify the occupancy rights which the tenants should be getting under this Act, I will, in case I happen to be here, be very eager to support such a measure. In the meantime, I think it is to their interest that the occupancy privilege which the Hon'ble the Finance Member contemplates to confer upon them by executive order should rather be further secured by means of a Bill which will carry with it the weight and approval of the honourable members and the august members of this House. It is with a view to add to the grace and dignity of the Tarai and Bhabar that I desire to put this provision here instead of leaving it to the mercies of the benevolent Government. I think I have met his objection by expressing my readiness to accept the amendment of my friend Mr. Nemi Saran. There are a number of villages which would, at the tag end of all this discussion, serve as curious reading, if we are to go through the whole list.—I may leave that for the present. I may inform the Government that, so far as it is possible for me to ascertain from responsible persons—persons considered responsible by the Government—I may add, the name of all those villagers is Bhukasas and they carry on

[Pandit Govind Ballabh Pant.]

cultivation and are supposed to be a shifting community. I may state here for the information of the honourable members of this House that the Agra Tenancy Act has been in force in all those villages which are owned by private proprietors and, only Government estates have been exempt from its operation. It has also been in force in Kashipur Pargana. If they will please look at Schedule I, it says Garhwal and Naini Tal exclusive of the Pargana of Kashipur and of the following villages in the Tarai sub-division. In fact, in the sub-mountain tract of Tarai and Kashipur all the villages held by private proprietors are subject to the principles of occupancy tenure and only the villages that are held by the Government are immune from that disability, and I want them to share the fate of their colleagues in the villages owned by private proprietors. I do not want them to enjoy a superior status under the patronage of the Government. It is because of that that I have brought forward my amendment, and I hope that Government will have no objection to that, as private proprietors may probably be handicapped if their own tenants enjoy a superior privilege, and it is only in the interests of private proprietors that their status too should be reduced and brought on a par with that of the tenants in villages held by private owners. So, I hope the Government will look at this question from this aspect and will accept this amendment.

Hon'ble Sir Sam. O'Donnell : The honourable member for Dehra Dun has forgotten one thing. He has forgotten that an amendment was proposed giving occupancy rights to all the tenants in the estates in the plains not owned by Government and we readily accepted that amendment. It has been the policy of Government to allow occupancy rights to accrue in the Government estates in the plains, and when it was proposed that tenants in whose favour occupancy rights had not already accrued, should now get them under this Bill, we agreed with readiness.

Rao Sahib Abdul Hameed Khan :

جناب والا - میں سوال کر سکتا ہوں جناب کی اجازت سے کہ جمنا اور گندما کی نہر Canals کے کنارے کنارے جو زمین پڑی ہوئی ہے اور ۶ - ۶ سال کے پتے پر گورنمنٹ اُس زمین کو زراعت کے لیئے اُٹھاتی ہے اور پچھلے پچاس سال سے یہی ہو رہا ہے اس پر جو کاشتکار ہیں اُن کو کیوں قانون سے مستفید نہیں کیا جاتا •

Hon'ble Sir Sam O'Donnell : The land to which the honourable member refers are little bits of land alongside the canal, which belong to the Government and may be required by Government any time for the canal. The larger estates which are owned by Government are in Allahabad and Ghazipur and in those estates all the tenants will become occupancy tenants. I further pointed out that the statutory rules we have drafted under the Scheduled Districts Act practically gave occupancy rights to tenants in the Tarai and Bhabar. It is not that I have the least objection to conferring fixity of tenure and granting hereditary rights. Two years ago we agreed to that. It is merely that the form in which we propose to give them is more suitable to an area

in which cultivation is not always stable. Pandit Govind Ballabh Pant tells me that he has excluded all those villages which are in any way precarious.

Pandit Govind Ballabh Pant : That is the *bukas*.

Hon'ble Sir Sam O'Donnell : But I understand there are other areas also in which the conditions are by no means stable. The *bukas* are an indigenous population which manages to thrive in the Tarai and Bhabar better than any other. I have no doubt that their cultivation does shift, so does that also of a number of other tenants. I wish to protest very strongly against the suggestion that we are trying to withhold from our own tenants anything that we are giving to the other tenants. I do not think there is anything else I need add on that point. As to the conferment of proprietary rights so as to encourage tenants to go into the Tarai and Bhabar, I think the difficulties are not about proprietary rights or about rents which are extremely low or about fixity of tenure. I think the difficulties are physical difficulties. The difficulty is to get tenants to thrive that tract. We have had tenants coming from the Punjab and after a short time they have gone back. They did not find the area one in which they could thrive. Every Government officer who has gone from the plains into the Tarai and Bhabar has been struck by the extraordinarily good economic condition of the people—ample land, as much land as they can cultivate, free water, very low rents, free fuel and free grazing. All these advantages they have, but the one thing against which they have to contend is malaria and, that particular difficulty, with all deference to the honourable member for Dehra Dun, will not be overcome by this amendment or any other amendment.

Question, that Babu Nemi Saran's amendment to that of Pandit Govind Ballabh Pant be made, put and agreed to.

Amendment, as amended, put and agreed to.

SCHEDULE I, PART II.

Babu Sangam Lal : Instead of moving for the total omission of this sub-clause, I would move that the following words be added:—

“Excluding the villages owned by Government.”

The Hon'ble the Finance Member has just told us, that he accepted the amendment which I moved that all tenants in Government estates should acquire occupancy rights, with the only exception of Bundelkhand. If this schedule, as it stands, is passed, it will mean that the tenant of the Government estates lying to the south of the Kaimur range in the Mirzapur district will not get the benefit of the amendment which the House passed. Therefore, it is only in the nature of a consequential amendment, because when we have agreed to confer occupancy rights on all tenants of Government estates (excepting Bundelkhand), the people living in this tract should also get its benefit. I, therefore, commend my motion to the acceptance of the House.

Mr. R. Burn : I rise to oppose this amendment. The inhabitants of the Government villages in the south of the Mirzapur district stand on quite a different footing from the people in the rest of the province. They are shy tribes, not very well educated, though Government is trying to improve their condition in that respect. If we apply to a tract inhabited by people like that the very complicated provisions of this Act, I am sure that it will not be in the least for the benefit of this people.

[Mr. R. Burn.]

Moreover, the Tenancy Act is already applied in a modified form, and we have one or two tenures down there at present for which there is no provision at all in this Act. The result will, therefore, be complete confusion.

Babu Sangam Lal : I am sorry I have not been convinced by the arguments advanced by the Senior Member of the Board. He says that the people living in the Government estates in the south of Mirzapur are so simple that they will not be able to understand and get the benefits of this complicated Act. I think if after 150 years of British rule people under the immediate charge of the Government are so simple that they are not able to get the benefits proposed to be conferred by this Act, it is a very sad commentary on their rule.

So far as the members of this House are concerned, I need not labour this point because they have already agreed that all tenants of Government estates must have occupancy rights. Therefore, I press this motion.

Hon'ble Sir Sam O'Donnell : I do not know if the honourable member for Allahabad has ever been in the south of Mirzapur. I rather fancy he has not. If he had occasion to go there and see the people living in the south of Mirzapur, he would realize that they stand, as Mr. Burn says, on an entirely different footing from the rest of the inhabitants in the plains. They are a very simple, primitive, and backward people and that is the reason why it is undesirable to introduce a complicated measure of the sort in the part of Mirzapur where they live. As a matter of fact too they have got fixity of tenure. I have not read the reports recently, but Mr. Wyndham who had been there for thirteen years, told me that those who held for three years had occupancy rights. So that they are really in a much better position that the acceptance of this amendment would ensure. In fact the honourable member has never been to that tract. He has never seen the place, so he cannot know what the conditions of the people there are. If he goes there he will realize that they are a backward and primitive people. It is for this reason that we do not want to extend the elaborate provisions of this Bill. So far as fixity of tenure is concerned, they have got it.

Question put, that in clause II of the first schedule after the words "Kaimur range" the words "excluding the villages owned by Government" be added.

The House divided : Ayes, 35 ; Noes, 31.

Ayes.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksena.
Babu Jai Narayan Chaudhri.
Babu Bhagwati Sahai Bedar.
Obaudhri Jaswant Singh.
Pandit Nanak Chand.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Amba Prasad Sahib.
Raja Suryapal Singh.

Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Jhanni Lal Pande.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyaya.
Bai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
Bhaya Hanumat Prasad Singh.

Ayes.

Pandit Govind Ballabh Pant,
 Pandit Har Govind Pant,
 Babu Ram Chandra Sinha,
 Babu Sita Ram,
 Maulvi Zahur-ud-din,
 Rao Sahib Abdul Hameed Khan,
 Nawabzada Muhammad E'jaz Ali Khan,
 Khan Bahadur Chaudhri Amir Hasan Khan.

Mr. Muhammad Ismail Ali Khan.
 Khan Bahadur Shaikh Masud-us-Zaman.
 Khan Bahadur Saiyid Muhammad Ashiq
 Husain.
 Rai Bahadur Lala Mathura Prasad Mah-
 rotra
 Dr. Ganesh Prasad.

Noes.

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut. Nawab Muhammad Ahmad
 Sa'id Khan.
 Hon'ble Rai Rajeshwar Bali.
 Hon'ble Thakur Rajendra Singh.
 Hon'ble Nawab Muhammad Yusuf.
 Mr. G. B. Lambert,
 Mr. E. A. H. Blunt,
 Kunwar Jagdish Prasad.
 Sir Ivo Elliott.
 Mr. P. H. Tillard,
 Mr. H. A. Lane.
 Mr. R. J. Yorke.
 Mr. R. Burn.
 Mr. A. W. Pim.
 Mr. B. J. K. Hallows,
 Mr. E. L. Norton.

Mr. H. G. Billson.
 Mr. R. J. S. Dodd,
 Colonel A. W. R. Cochrane.
 Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenroder.
 Mr. H. O. Desanges.
 Mr. H. David.
 Babu Khem Chand.
 Rai Jagdish Prasad Sahib.
 Rai Bahadur Babu Ram Nath Bhargava.
 Raja Narayan Pratap Singh.
 Khan Bahadur Mr. Muhammad Aslam
 Saifi.
 Khan Bahadur Munshi Siddiq Ahmad.
 Mr. E. M. Souter,
 Mr. Tracey Gavin Jones.

Question, that the first schedule stand part of the Bill, put and agreed to.

THE SECOND SCHEDULE.

LIST I.

*Sections and orders of the Code of Civil Procedure, 1908,
 which do not apply to suits or proceedings under this Act.*

Section 9.

Sections 68 to 72 inclusive.

Section 88.

Sections 113, 114, 115.

Order XXII, rule 8.

„ XXXIII (Pauper suits). The whole.

„ XXXV (Interpleader suits). The whole.

„ XXXVI (Special case). The whole.

„ XLIV (Pauper appeals). The whole.

„ XLVI (Reference). The whole.

LIST II.

Sections and orders of the Code of Civil Procedure, 1908, which apply, subject to the modifications stated against each.

Serial No.	Sections.	Modification.
1	24	Applies only to the transfer of appeals under this Act by the High Court from the court of one district judge to the court of another district judge.
2	33	No decree need be prepared in the case of an application under this Act unless the preparation of a decree is prescribed by rule.
3	58(2)	Where a judgement-debtor has been released from detention under this section and the amount due under the decree does not exceed Rs. 100, the court may declare him absolved from further liability for payment of money under that decree, and such liability shall thereupon be extinguished except in regard to liability to ejectment.
4	60	To the particulars not liable to attachment or sale shall be added "manure stocked by an agriculturist."
5	98	Nothing in this section shall require two members of the Board to sit together in the exercise of appellate or revisional jurisdiction under this Act.
6	144	In this section the words "or order" shall be deemed to be inserted after the word "decree" wherever it occurs.

Sections and orders of the Code of Civil Procedure, 1908, which apply, subject to the modifications stated against each.

Serial No.	Orders.	Modification.
7	Order V, rule 5.	In all suits under this Act the summons to the defendants shall be for the final disposal of the suit, unless the court is of opinion that the summons should be for the settlement of issues only.
8	Order V, rules 9-30.	A summons or notice may, if the Local Government by rule, either generally or in respect of any local area or any class of cases, so directs, be served by post either in addition to, or substitution for, any other mode of service.
9	Order VII, rule 1.	In addition to the particulars contained in this rule, the plaint shall specify the name of the village or mahal and of the pargana or other local division, in which the land is situate to which the suit or other proceeding relates, and (unless such land can be otherwise adequately described) the number of each field according to the Government survey; and if the suit is for arrears of rent, the plaint shall contain a statement of account showing the annual demand for each period to which the suit relates, the amount (if any) received, and the amount claimed to be due; and if the suit is for the ejectment of a tenant the plaint shall set forth the ground or grounds on which the ejectment is sued for.
10	Order VIII, rule 6.	No set-off shall be allowed in any suit under this Act, except a sum due to the defendant on an unsatisfied decree under this Act or under any enactment hereby repealed.
11	Order XLI, rules 30 and 31.	No judgement of the Board need be dated, signed and pronounced in open court.
12	Order XX, rule 6.	Every decree for rent shall also state the amount, including interest, due on account of each agricultural year in respect of which relief is granted.
13	Order XXI ...	(1) No application for the execution of a decree shall be made by an assignee of the decree unless the assignor's interest in the land to which it relates has become and is vested in such assignee.

Hon'ble the President: We now come to the second schedule.

Bhaya Hanumat Prasad Singh: I rise to move that section 58(2), serial No. 3 of list II of the schedule be deleted.

[Bhaya Hanumat Prasad Singh.]

Sir, in this section I find that a tenant against whom a decree of the amount which does not exceed Rs. 100 has been passed and if he is sent to jail, will not be liable to payment of the amount due under the decree after he has been released from detention. He will only be liable to ejectment. If this provision remains in this Bill it will create inducement to some of the tenants to go to jail and then to be relieved of the payment of the amount decreed and the consequence will be that it will prove extremely detrimental to the landlords. They will consequently be put to great pecuniary loss. Sir, some of my friends have raised objection that a tenant would not like to be ejected from his holding. Sir, I admit that, but there will be tenants who would like to be ejected instead of paying Rs. 100, and in such cases the landlords will be put to a great pecuniary loss. I, therefore, move this motion and hope that the House will accept it.

Hon'ble Sir Sam. O'Donnell : The provision in the schedule is simply the existing law. It is not, as the honourable member who has moved this amendment, seems to have supposed, a wicked innovation. It is simply the existing law and it is absurd to say that the landlord will be put to great loss since the tenant remains liable for ejectment, and it applies only when the decree does not exceed Rs. 100. Cases as a matter of fact are very rare of this kind, but when they do occur, I see no reason why we should not retain this provision. I have never heard of any complaint from anybody on this head.

Khan Bahadur Mr. Muhammad Ismail : It is perfectly true that cases under this clause would very rarely arise. The tenant is certainly not very keen to give up his holding. On the other hand we have got the Insolvency Act for the protection of those persons who are incapable of paying their debts. If a tenant has allowed arrears to accumulate with the intention of going away to Burma or somewhere else to earn his living; if he leaves his children on the holding and remains in possession of it for ten or fifteen years during which period arrears of rent have been allowed to accumulate, and if he does not want to cultivate, all you can do is to eject him from the field. If there is a genuine case in which he is unable to pay his debts, he can always apply to the Insolvency Court and he can get a protection order which will save him from being sent to jail as well as from further persecution. On the other hand if he is a person who has got money or who is such that he is not entitled to get a protection order, in that case he will not be protected by the court. I therefore think that the matter ought to be left to be decided by the Insolvency Court and that this serial number ought to be omitted.

Babu Sangam Lal : Khan Bahadur Mr. Muhammad Ismail appears to have misunderstood the provision as contained in this Bill. He has talked of the Insolvency Act and so on. First of all, my friend knows that if a person wants to become insolvent and to get his discharge, the minimum expenditure that he has to incur is not less than Rs. 50 ordinarily. I am sure honourable members do not expect a tenant to spend Rs. 50, in order to become insolvent and obtain his discharge. That point, however, is not before us. The question now before us is this, that if a tenant fails to pay arrears of rent and if in execution of a decree he is sent to jail, when he is released he is exempted from the payment of those arrears. Of course, he will be ejected from his

holding. Therefore the question of going to Burma and Rangoon and the non-payment of rent has absolutely nothing to do with this, because he will remain in the village; the decree will be executed against him and he will be sent to jail. The only question is that when he is released from jail, he will be exempt from the payment of his rent and he will be ejected from his holding.

Khan Baladur Maulvi Fazl-ur-Rahman Khan : I rise to support the amendment that has been moved by my friend Bhaya Hanumat Prasad Singh. Revenue laws, Sir, ought to be based on the principles on which imperial enactments are based. If a man is fined and in default of payment of the fine he is sent to jail, he will serve out the whole term but the amount will remain outstanding against him. His liability to pay it will not come to an end. Now, Sir, if a man is indebted to a creditor, that creditor goes to the civil court, obtains a decree, and in execution of that decree gets the person of the judgement-debtor attached, viz. that judgement-debtor is sent to the civil prison. He serves out the term of imprisonment and when he comes out, he finds that the debt is still outstanding against him. I do not think it will at all be beneficial to the parties concerned to create an invidious distinction between the tenants who are indebted to their zamindars and those persons who are indebted to ordinary creditors. A debtor, whether he is indebted to a zamindar or whether he is indebted to a money-lender, is a debtor after all. We are not justified in according preferential treatment to any particular class of debtors. For these reasons I am against the words which exist in the Bill, and support the amendment.

Pandit Govind Ballabh Pant : I am tempted to speak by the remarks made by the honourable member for Shahjahanpur. He wants the procedure of revenue courts to be approximated or brought identically on a line with that obtaining in civil courts and is enamoured of it for it affects in particular the relations of creditors and debtors. Well, as one who has sympathies as much with tenants as he has respect for the landlords, I am prepared to take his offer and to accept it heartily. I will remind him that in the civil courts there are various classes of property which are altogether exempt from attachment or sale. I may also remind him that at present a person who earns an income of Rs. 40 is entitled to pocket the whole of it, and not a shilling can be attached by a creditor who has got a decree against him. I do not know how far he is under the impression that there are many tenants whose average income exceeds Rs. 40 a month and if he wants that tenants should be exempted from arrest, distraint, attachment, and detention in jail if their income does not exceed Rs. 40 on the analogy of the civil courts, well, I shall thankfully accept the suggestion. I may also tell him that ordinarily under the Civil Procedure Code it is the principle that persons will be so treated that those particular items of property from which they derive their sustenance will not be attached, such as tools and instruments, holdings, and so on. If he likes holdings to be exempted altogether from any effect of the decree, I have no objection there either. But he will have to admit, I think, that invidious distinctions have already been made. Ejectments cannot be only intimated but completely and finally effected by means of an application only without getting any decree whatsoever. He should also be aware of the fact that crops can be distrained without seeking the assistance of any court.

[Pandit Govind Ballabh Pant,]

He must also be aware of the fact that a tenant can be ousted from his holding altogether even if there are ten rupees outstanding on the day following the day on which that amount fell into arrears. So if he is going to accept the analogy of civil courts, I am prepared to agree with him though I would never have the temerity to make a suggestion to that effect. I may only remind him that under section 193, clause (m), of the present Act, the procedure is exactly what is provided in the present clause.

Bhaya Hanumat Prasad Singh : With regard to the motion I have said enough. I have not to add more in support of what I have said. I would simply quote a practical example where you will find that such cases do occur. It is quite possible that a person may be a tenant of two or three zamindars. If he does not cultivate the fields of one of the zamindars against whom he has some ill-feeling and uses those plots for some other legitimate purposes allowed by this Bill, the zamindar will not be able to utilize his right to distrain the crops of that tenant for the arrears of his rent. He has the right to distrain crops in the land pertaining to him. If the tenant is sent to the civil jail and after a month is released from detention, he will be absolved from the liability he had to pay to the zamindar, then in that case the zamindar will be put to a great loss. All of us know it well that there is a great competition between the zamindars in the rural areas for tenants. The other zamindar or zamindars of whom he is a part-tenant would protect him by giving more land. He will thus, being protected by the other zamindars with whom he is in alliance, not mind ejection from the holdings of the zamindar with whom he is not well disposed. Then, the result will be that, he will be absolved from the liability and the zamindar against whom he has some grudge and ill-feeling will be put to loss. My friends, in this House will think over a case like this and then pass their judgement after considering what I have said.

Hon'ble Sir Sam O'Donnell : I am surprised that this proposal should have received any support. After all we are not altering the law in any way. The law has always recognized the distinction between the small tenant and the ordinary debtor. As has been pointed out, the tenant has gone to jail. For one thing he is liable to be ejected, his crops may be distrained. Surely it is not too much to say that after he has gone to jail he should be exempted from further liability. This provision does not apply to the well-to-do tenant. It only applies to the smaller tenants. I think the Council will do well to accept the provision in the Bill.

Hon'ble the President : The amendment moved is that section 58(2), serial No. 3, of list II of the second schedule be deleted.

Question, that serial No. 3 stand part of the Bill, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move, Sir, that in schedule II, list II, serial No. II, in line 2, column 3, substitute "or" for "and."

Hon'ble Sir Sam O'Donnell : I move, Sir, that in the second schedule serial No. 11, list II, of schedule II, be placed after the present serial No. 17, and that the intervening serial numbers including the present serial no. 17 be renumbered accordingly.

The object of this amendment is simply to put serial No. 11 after serial No. 17.

Question, that both these amendments be adopted, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move, Sir, that in schedule II, list II, serial No. 14, in line 6 of column 3, substitute " had " for " has."

This is merely a grammatical amendment.

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move, Sir, that in schedule II, list II, serial No. 15, in line 1 of column 2, substitute " XLI " for " XII."

Question, that this amendment be made, put and agreed to.

Question, that schedule II, as amended, stand part of the Bill, put and adopted.

THE THIRD SCHEDULE.

(See section 125.)

FORM OF LEASE OR COUNTERPART.

I, A. B., son of C. D., resident of H. I., have ^{leased}_{taken on lease} the undermentioned land ^{to F. G.}_{from A. B.}, son of H. I., resident of J., in mahal K, mauza L.

(Here adequately describe the holding.)

at an annual rent of Rs. (), payable in the following instalments and on the following dates, namely :—

() Rs. on the () day of ()
 () Rs. on the () day of ()
 () Rs. on the () day of ()
 () Rs. on the () day of ()

the period of the lease being for () years, that is to say, from (date) to (date)

Dated the () day of (), 19 .

{ Signed }
 { or marked. }

A. B., landholder.
F. G., tenant

(Witness, if marked) M. N.

Hon'ble Sir Sam O'Donnell : I beg to move, Sir, that in the third schedule in line 2 of the form of lease or counterpart substitute ^{"J"}_{"E"} for "I."

Question, that this amendment be made, put and agreed to.

CLAUSE 1.

CLAUSE 1(1).

Short title. 1. (1) This Act may be called the Agra Tenancy Act, 19 .

Local extent. (2) It extends to the province of Agra except the areas specified in the first schedule :

Provided that the local Government may, by notification in the gazette, extend the whole or any part of this Act to all or any of the areas so excepted.

Provided also that no provision of this Act which is inconsistent with the provisions of the pargana of Kaswar Raja Act, 1915, shall apply to the pargana of Kaswar Raja in the district of Benares; and

Commencement. (3) It shall come into force on the day of 19 .

Hon'ble Sir Sam O'Donnell : I beg to move, Sir, that in sub-clause (1) of clause 1, for the figure 19, the figure "1926" be substituted.

Rai Jagdish Prasad Sahib : I have an amendment to move.

Hon'ble the President : Your amendment is to sub-clause (3). We are now discussing sub-clause (1).

Question, that for the figure "19" the figure "1926" be substituted in clause 1(1), put and agreed to.

Dr. Ganesh Prasad : I beg to move, Sir, that proviso 2 be deleted and that the following be added to clause 1 :—

"And all provisions of the Kaswar Raja Act of 1915 in conflict with this Act, shall cease to operate hereafter."

I was informed by certain landlord friends that the conditions in Kaswar Raja pargana of the Benares district were peculiar and for that reason an Act was passed in 1915. It appeared to me rather surprising that the benefits of this particular Bill should not be extended to Kaswar Raja pargana. I am not, as I have already said, an expert in revenue matters, and I am perfectly willing to withdraw my motion after hearing what Government members have to say about it.

Mr. R. Burn : Kaswar Raja pargana consists of a number of villages which for many years were treated as part of the family domains of the Maharaja of Benares. He administrated the villages which comprised that pargana along with other villages in the domains. In 1911 when the Benares State was constituted, these villages which are scattered villages in the Benares district, were not included in the State. In the agreement between Government and the Maharaja it was decided that these villages should be administrated as part of the Benares district, but for many years, since at least 1828, the administration had been in the hands of the Maharaja and different rights had accrued to the tenants. So in 1911 it was provided that a record-of-rights should be prepared and when that had been completed, in 1915 an Act was passed which preserved to the under-proprietors and the tenants in those villages certain rights which had grown up during the previous hundred years. If this amendment is passed and the Act of 1915 is

abrogated, and the general provisions of the *Agra Tenancy Act* come into force a considerable number of tenants will lose rights which they possess at present. Since we began this discussion of the Bill I have had the advantage of meeting the Chief Secretary of the Benares State, and as I stated at an earlier stage of this debate, the proposal of Government is that when this Bill becomes law the conditions of Kaswar Raja pargana should be discussed again in consultation with the Maharaja who owns all the villages, and the opinion of the tenants themselves will be obtained through the local authorities, and Government will then consider the question how far the Kaswar Raja Act should be modified. Under the Bill as it stands the whole Bill will apply to Kaswar Raja except where it is inconsistent with the provisions of the Kaswar Raja Act. Those provisions I may briefly summarize. There are fixed-rate tenants in these villages. Tenants who had acquired occupancy rights before the record-of-rights was prepared under the Act of 1911 have a saleable right. If this Act were applied, the saleable right would go. There is a special provision in regard to groves. In the case of a grove-holder who held his grove before the record-of-rights was framed if his grove is cut he becomes an occupancy tenant in the land. That is a far more liberal provision than that in this Bill. The tenant of an old grove gets saleable occupancy rights and the tenant of a new grove becomes an ordinary occupancy tenant. There is no provision at all about resuming rent free grants. I have said enough, I think, to show that to extend this Act without further discussion would mean very serious loss to the tenants of Kaswar Raja.

Pandit Yajna Narayan Upadhyā : I rise to oppose the amendment moved by Dr. Ganesh Prasad. My reason for opposing the amendment is that the object of the learned doctor is simply to ruin the tenants of the pargana. I know full well that the tenants of this pargana are a bit happier and more prosperous than the tenants of the other parganas of the Benares district and that if the provisions of the new Act, are extended to that pargana, I am sure the tenants will greatly suffer. During the *Maharram* holidays I visited the pargana and gathered the opinion of the present tenants residing there ; they are strongly opposed to this amendment. I further submit, Sir, that it will be impossible for the present legislature to make this amendment at present, because when the Maharaja of Benares was made a Ruling Chief, there was an agreement between the Maharaja of Benares and the Government. This pargana was formerly a portion of the family domains of the Maharaja of Benares, and when the Maharaja of Benares was made a Ruling Chief of a portion of the Mirzapur district, this portion, pargana Kaswar, went to the British Government and the Maharaja of Benares was made its zamindar. At the time of making over this pargana to the British Government the Maharaja of Benares consulted his tenants, and after consulting them he entered into an agreement with the Government that the tenants of the pargana should be treated in such and such a way. I say that the tenants of this pargana have got more rights which other tenants do not possess. The rights of these tenants have been very briefly brought to the notice of the House by Mr. Burn, and I am also going to bring to the notice of the House the rights which they possess. In the case of occupancy tenants, the pre-settlement occupancy tenants have got the right to transfer occupancy holdings and at the same time the right is

[Pandit Yajna Narayan Upadhyaya.]

saleable. In the same way grove-holders have got rights which the present Agra Tenancy legislation cannot grant. There are certain other rights too of the tenants which are not possessed by the tenants of the province of Agra. So, on behalf of the tenants of Kaswar pargana I respectfully beg to submit to the House that they should not deprive those tenants of the rights which they have enjoyed for hundreds and hundreds of years and if they are going to take such a step I think it is absolutely necessary that the opinion of these tenants should be taken. Mr. Burn has told us that he has been in consultation with the Chief Secretary of His Highness the Maharaja of Benares. Therefore I do not think it is necessary to accept this amendment at this stage. I oppose the amendment.

Hon'ble Sir Sam. O'Donnell : I am sure that Dr. Ganesh Prasad has no desire to take away from the tenants any rights which they may be enjoying at present. Therefore I feel sure that after having heard the explanation of Mr. Burn he will not wish to press his amendment.

Dr. Ganesh Prasad : I had absolutely no intention during the whole course of the debate that has gone on for days and days to be a party to any kind of injustice either to the tenants or to the landlords. I received some information from some landlord friends about the need that there was in their opinion for the extension of the provisions of this particular Agra Tenancy Bill to Kaswar Raja Pargana. After what I have heard from the Senior Member of the Board of Revenue I have absolutely no desire to press this amendment to a division. I may inform my learned and honourable friend Pandit Yajna Narayan Upadhyaya that he was also assured by me some days ago that I had no intention of being a party to any kind of injustice to any tenant and that I might withdraw the amendment. If I have brought forward this amendment it is simply because I am not as great an expert in tenancy matters as I am in some other matters. I beg to withdraw the amendment.

Amendment by leave withdrawn.

CLAUSE 1 (3).

Hon'ble Sir Sam. O'Donnell : I beg to move that in clause 1, sub-clause (3) for the words "the day of 19" the following words be substituted :—

"On such date as the local Government may by notification in the *Gazette* appoint in this behalf."

This is the usual formula as worded, for example, in the Oudh Chief Court Act.

Rai Sahib Lala Jagdish Prasad : I beg to move that in line two of sub-clause (3) of clause (1) for "the day of 19" the following words be substituted :—"the first day of July, 1927."

I think, Sir, that this Tenancy Act should come into force from the beginning of the next agricultural year. Now we are already in the current agricultural year. So it will be better if this takes effect from the next agricultural year. In the meantime the zamindars and the tenants will have time to acquaint themselves with the provisions of this

new Act. As the Act is of a very complicated nature, I think it will be in the interests of all if it takes effect from the beginning of the next agricultural year, i.e., from the 1st of July, 1927.

Rao Sahib Abdul Hameed Khan: I move that "the 1st day of July, 1928" be substituted.

Hon'ble Sir Sam O'Donnell: Is this not time-barred? It was handed in, I think, at 4-15 on the 26th.

Hon'ble the President: This will be an amendment to an amendment now. It is down as an original amendment in the list.

Rao Sahib Abdul Hameed Khan:

جناب والا —

میں اپنے معزز دوست راء صاحب لالہ جگدیش پرشاد کی ترمیم میں یہ ترمیم پیش کرنا چاہتا ہوں کہ بجائے سنہ ۱۹۲۷ء کے سنہ ۱۹۲۸ء رکھا جائے *

جناب والا — قبل اس کے کہ میں اپنی ترمیم کے متعلق کچھ عرض کروں یا راء صاحب لالہ جگدیش پرشاد صاحب اور گورنمنٹ کی ترمیم کے متعلق کوئی راء ظاہر کروں میں گزارش کروں گا کہ جس زمانہ میں یورپ کی گذشتہ بڑی لڑائی بڑے زوروں سے ہو رہی تھی تب میں اسکول میں تعلیم پاتا تھا اُس زمانہ میں ہمارے پروفیسر صاحبان میں سے ایک صاحب جنگ سے واپس آئے تو انہوں نے ایک تقریر ہم سب کے مجمع میں کی اور نلایا کہ متحاذ جنگ پر سپاہیوں کو کیا کھا تکلیفیں ہیں منجملہ دیگر تکلیفوں کے انہوں نے فرمایا کہ سب سے بڑی تکلیف اُن کو Uncertainty یا عدم یقین کی ہی ہے یہ سب سے زیادہ دردناک اور تکلیف دہ چیز ہے Uncertainty is the greatest pain جو تجویز ہمارے آنریبل فائینس میمب صاحب نے پیش کی ہے اُس کا مطلب یہ ہے کہ اس ایکٹ کے نفاذ کی تاریخ کا فیصلہ گورنمنٹ کے لیئے چھوڑ دیا جائے لیکن کوئی نہیں کہہ سکتا کہ گورنمنٹ کب اور کس وقت اس کا نفاذ فرمائی لہذا میں عرض کروں گا کہ ہمیں ایک Definite step مستقل صاف فیصلہ کرنا چاہیئے اور اس معاملہ کو غیر محدود مدت اور نامعلوم وقت کے لیئے نہ چھوڑ دینا چاہیئے بلکہ ایک تاریخ طے کر دینا چاہیئے تاکہ لوگ یہ نہ کہیں کہ ہم بل پاس کرنے کی قابلیت تو رکھتے تھے لیکن اس کے نفاذ کی تاریخ کے تعین کرنے کی صلاحیت اور قابلیت ہم میں نہ تھی — اب میں اپنی تجویز میں اور راء صاحب لالہ جگدیش پرشاد کی تجویز میں مقابلہ کر کے دکھاتا ہوں کہ کون سی زیادہ بہتر ہے — راء صاحب نے فرمایا ہے کہ بل فصلی سال سے شروع ہو کیونکہ اس قسم کا قانون جو کاشتکاران اور زمینداران کے متعلق ہو سال فصلی سے شروع ہونا چاہیئے مجھے اس سے کلی اتفاق ہے — آنریبل فائینس میمب فرماتے ہیں کہ اس قسم کے قوانین کے لیئے یہ پُرانی رسم ہے کہ یکم جنوری سے نفاذ ہوتا ہے ممکن ہے پُرانی رسم ہو لیکن مناسب اور دانشمندانہ رسم نہیں ہے — ہمیں لکیر کا فقہ نہ ہونا چاہیئے — ہمیں اپنے لیئے خون راستہ تلاش کرنے کے لیئے ہر وقت تیار اور آمادہ رہنا چاہیئے — ہم میں اپنے پر اعتماد اور جدت کا مادہ ہونا چاہیئے — اب میں اپنے ترمیم کے بعید وجوہات عرض کرتا ہوں یہ سب صاحبان

[Rao Saib Abdul Hameed Khan.]

کو معلوم ہی کہ گورنمنٹ آف انڈیا نے جو لوکل گورنمنٹوں کے ایماء اور تائید سے ایک کمیشن زراعت کے مسئلہ کی تحقیقات کرنے کے لیے مقرر کیا ہے اور اُس کمیشن کے تقرر کو بہت اہمیت دی گئی ہے۔ ولایت میں جو اہمیت اُس کو دی گئی ہے وہ وہاں کے اخبارات سے ہم کو معلوم ہوئی ہے یہاں بھی مسٹر ریڈ (Mr. Reid) اس خاص کام کے لیے ہمارے صوبے میں متعین ہوئے ہیں کہ وہ زرعی حالات کے متعلق ایک رپورٹ مرتب کر کے کمیشن مذکور کے روبرو پیش کریں۔ میرے خیال میں یہ بڑے افسوس کی بات ہے کہ ہمیں ایسے بڑے کمیشن کی راے تو معلوم نہیں ہوئی ہے اور ہم ایسا زبردست قانون نافذ کرنے کے لیے تیار ہیں۔ جناب والا۔ میری گزارش ہے کہ ہم کو کمیشن کی راے کا انتظار کرنا چاہیئے ایسے بڑے کمیشن کی راے کو پہلے ہی سے ٹھکرا دینا اور یہ سمجھ لینا کہ وہ ہماری مشکلات اور ہمارے مسائل کے متعلق کوئی اچھی راے نہیں دے سکتا بالکل ظام اور حماقت ہے۔ ہمیں اُس کا انتظار کرنا چاہیئے۔ یہ اُس کمیشن کی رپورٹ ہوگی جس میں ہم سے بدرجہا بہتر اصحاب شامل ہیں جس کو گورنمنٹ نے ہی مرتب کیا ہے اور جس کی ترتیب کا حقیقت میں ملک کے بڑے حصے نے اور ہر پارٹی نے (welcome) خیر مقدم کیا ہے۔ جب تک ہم ایسے کمیشن کی رپورٹ نہ سنیں تب تک ہم کیسے کوئی قطعی راے قائم کر سکتے ہیں۔ حالانکہ ہم نے اس قانون پر بہت کافی غور کر لیا ہے لیکن پھر بھی یہ نہیں کہا جاسکتا کہ اب یہ بل درجہ تکمیل کو پہنچ چکا ہے اور اس کے بنانے والے اور اس پر غور کرنے والے کسی روحانی طاقت سے وہ سب جانتے تھے جو Agricultural Commission کی رپورٹ تھی۔ میں بھی اس آنریبل ممبر ہوں لیکن میں اپنے میں کوئی ایسی قابلیت اور قوت نہیں پاتا ہوں۔ میں فطرتاً اپنے ہی گز سے سب کو ناہتا ہوں اور سمجھتا ہوں کہ کوئی صاحب نہیں جان سکتے کہ Agricultural Commission کی رپورٹ کیا ہوگی۔ ایسی صورت میں میں یہ سمجھتا ہوں کہ میں نے جو کچھ عرض کیا ہے وہ ضرور قابل غور ہے اور یقیناً ہمیں اُس کمیشن کی رپورٹ کا انتظار کرنا چاہیئے اور میں اُمید کرتا ہوں کہ ہمارے منسٹر صاحب Agriculture جو ہم میں سے ایک مخصوص معزز ممبر ہیں اس لحاظ سے کہ وہ منسٹر بھی ہیں اس مسئلہ پر روشنی ڈالینگے اور میری تحریک کی تائید کرینگے۔ آج مسٹر کلارک یہاں نہیں ہیں لیکن چونکہ یہ مسئلہ ضروری ہے لہذا میں اپنی تجویز کو House کے سامنے پیش کرتا ہوں اور اُمید کرتا ہوں کہ میرے آنریبل دوست مسٹر پنت جو کہ نہ کاشتکار ہیں اور نہ زمیندار ہیں لیکن چونکہ انہوں نے اس بل پر زیادہ غور و خوض کیا ہے وہ بھی Agricultural Commission کی رپورٹ Study کرنے کے خواہشمند ہونگے۔ اس کے علاوہ میں ایک وجہ اور بھی سمجھتا ہوں کہ اس عرصہ میں دیکھوں کو اس کے پڑھنے اور سمجھنے کا موقع ملیگا۔ اور اس طریقہ سے وہ غلطیاں نہ ہونگی کہ جن سے ہزاروں کا خون ہو۔ میں اُمید

کوتا ہوں کہ زمینداران اور کاشتکاران دونوں کے interest میں یہ موقع دیا جائیگا •

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : I rise to support the amendment of my friend Rai Sahib Lala Jagdish Prasad on two grounds.

My first ground is that the language of this Bill is involved. There are many sections which are of immense length. The procedure prescribed by this Bill is cumbersome. It will be, Sir, very difficult for the tenants as well as the landlords to understand the provisions correctly if they will not have at least one clear year at their disposal. It is always unsafe to enforce an enactment before the parties which are likely to be affected by it fully understand it. If you examine the schedule carefully you will find, Sir, that different periods are fixed for different suits. For some suits three months are prescribed and for some suits six months are allowed. If this Bill is to be enforced in September or October, I do not think by that time the tenants and the landlords will be in a position to understand perfectly well what rights and liabilities have been conferred on them. Both tenants and landlords will suffer if the Bill will be hastily enforced—Many a suit will become time-barred long before the parties will become aware of the accrual of any cause of action. This is unfair.

My second reason is, as Rai Sahib Lala Jagdish Prasad has pointed out, that a Revenue Act ought to be enforced at the commencement of an agricultural year. It is I should say a bad principle to enforce it from January or from any other month. It may be said by the Hon'ble the Finance Member that some revenue laws were enforced from January and that this golden principle that Revenue Acts should be enforced from the commencement of an agricultural year was not acted upon by the Legislature which sanctioned the enforcement of those Acts. But, Sir, this is no argument, because clearly it was a mistake. Now we have grown wiser. When we have realized that we committed a certain mistake whether on account of ignorance, lack of experience or poor education, we should not repeat it over again. This Council consists of about 123 members who know better than the Government the conditions that are prevailing in villages and the circumstances under which the zamindars are placed. So the date that will be fixed by this August assembly will certainly be more convenient than the date which will be fixed arbitrarily by the Government. For these reasons I support the amendment of my friend Rai Sahib Lala Jagdish Prasad.

Pandit Govind Ballabh Pant : I rise to propose that in the amendment of the Hon'ble the Finance Member after the word "day" the words "not later than 1st of August, 1926" be inserted.

Hon'ble the President : This amendment cannot be moved, because the Bill has to receive the assent of His Excellency the Governor and the Governor General. I do not think that their assent can be received by the 1st of August, 1926.

Pandit Govind Ballabh Pant : May I then move that my amendment should be "not later than the 1st of September, 1926"?

Hon'ble the President : I do not think that it is proper to fix the 1st of September, because in a way we will be forcing His Excellency the Governor and the Governor General to give their assent to the Bill by that date.

Hon'ble Sir Sam O'Donnell: We want to bring this Bill into force as early as possible.

Pandit Govind Ballabh Pant: Sir, I move that my amendment should run as follows:—

“not later than 1st October, 1926.”

The reason why I move this amendment is not altogether disinterested. It has been said that some of us here who are in the legal profession have had the opportunity of getting a start on others by the close association with the deliberations in this Council, and I feel that having given this time to public business, we should get some benefit if the Bill is enacted at an early date, for, so far as other lawyers are concerned, they will take some time to go over the various provisions of the Bill to understand all its implications and all that it connotes and denotes. Some of us who have been connected here with the consideration of the Bill in its various stages have had the opportunity of coming into grip with the various clauses at the very outset. So, I think the Council will give us this reward by fixing an early date, so that we may be in a position to have a greater portion of the business that is likely to accrue from this Bill. Apart from this there are other reasons which, if not inconsistent with this, are more in consonance with my regard for public interest than my own. If honourable members will refer to the resolution by which the committee was appointed to consider this Bill they will find some very pertinent remarks in that resolution. It says “the passing of the Oudh Rent (Amendment) Act has established in Oudh a system of land tenure which is in many respects more liberal than that in the province of Agra.” Then follow the words to which I wish to invite the attention of the honourable members of this House: “There are clear indications amongst the cultivators of Agra of a keener realization of grievances and of growing determination to press for their redress and the more enlightened landlords are fully conscious of the need in their own interest as much as that of the tenantry for a radical revision of the law, which while doing full justice to the rights of all proprietors will secure a stable and contented tenantry.”

From this it appears that there is an urgent demand for some sort of measure to meet these grievances of the tenantry in Agra about which this resolution says “there are clear indications of a keener realization. So if there are such grievances and if the tenants have been realizing them very keenly, I think in public interest it is very desirable that this Bill, in case this Council holds that it meets these grievances, should be put in force as soon as it is possible. I may say at once that I am not committing myself to the Bill. I do not say that it does or does not meet with these grievances, but in case this Bill commends itself to the collective wisdom of this House and the honourable members are of opinion that it should be enacted into law and it will serve a wholesome purpose, it seems to me quite unreasonable and inconsistent with the very principle of consistency by which they swear that they should put off the enforcement of this Act after they have accepted it in its principles as well as in its details. As I said a minute before it is for them to consider whether the Bill does or does not satisfy the requirements of the situation. But in case they hold that it does, I see absolutely no reason why they should postpone its enforcement by a

single day. So I propose that the Bill should be put into force as soon as it is possible, and as it is not feasible to anticipate the date on which it will receive the sanction of the Government I have put the 1st of October. I expect that in case this Council adopts this Bill it will be put in force before that, that is immediately on the day it receives the sanction of the Governor General in Council. I think if the Bill is not to be put into force for a year or two, as has been proposed by two honourable members sitting on the cross-benches, then we have unnecessarily wasted all this time in going through the various clauses of this Bill, or we suspect that our successors will not be as capable and as competent as we ourselves are, and that as we are much wiser than those who will follow us, therefore we should pass this Bill, leave it in the Government archives and let it lie there so far as the actual operation is concerned for one year more. I think if this Bill deserved any consideration, if it deserved any publication, if it had not yet been considered by those who are affected by it, then that would have been a very good ground for postponing the consideration of the Bill. But it did not strike anyone of us that those interested had not been taking an interest, in the provisions of this Bill. It in a way indicates that we are satisfied that public opinion had expressed itself, that those concerned with it had come to know how it will affect their interests, and now to say that they will take a considerable time to find out what is there in the Bill is I think, a belated argument. Having passed the Bill, in case it is passed, to say then that those who are affected do not know what is there in the Bill and we in our divine wisdom have considered it best to thrust it upon them, but let it not be put into force for some time so that they may digest what we have provided for them, seems to me to be altogether illogical. I also submit that there is no precedent for holding that a Bill of this sort should be brought into operation only at the commencement of the agricultural year. So far as Act II of 1901 is concerned, it was brought into operation on January, 1902, and so far as the Oudh Rent Act is concerned, if I am not mistaken, it was not put into operation at the beginning of the agricultural year. Then there is another consideration which the honourable members will bear in mind. This Bill had in fact its genesis in the committee which was appointed by Sir James Meston in 1910. It was the rule 13 committee, at that time consisting of a preponderating majority of zamindars, which first of all dealt with the agrarian question. I do not mean to say that these provisions were there. But the history can be traced back to that day. Then there was the Board's Bill; after that there was the drafting committee appointed in April, 1924, and their report was published in August, 1924. The Bill has been before the public practically for about two years. I think all those who can take any interest in these matters or should have taken any care to acquaint themselves with the provisions of this Bill must have seen what is there in it and to postpone such a measure, in case it is passed by the Council—even if it is passed—for a number of months seems to me to be altogether inexpedient.

For these reasons I propose that the Bill should be put into operation as soon as it is possible. Some mention has been made of the Agricultural Commission. I presume that the honourable members of this House are aware of the fact that the scope of the Agricultural Commission is restricted; it has been expressly laid down that the Agricultural

[Pandit Govind Ballabh Pant.]

Commission will not be empowered to inquire into the relations between the landlords and the tenants. It is not to inquire into questions relating to land tenure. It is, so far as I am able to understand, to conduct an inquiry in a scientific spirit, and I do not think that anything that may emanate from that Agricultural Commission is likely to affect materially the provisions of this Bill.

I hope honourable members will agree with the amendment that I have proposed. Of course it will be for them to consider at a later stage what should be their attitude towards the Bill itself.

Hon'ble Sir Sam O'Donnell: The honourable member for Naini Tal has dealt so fully with the other amendments that he has left me little to say on them. It is clearly right and reasonable that if the Bill is to become law it ought to come into force as early as possible, and it is our desire that it should come into force at as early a date as is possible under the provisions of the Government of India Act. I hope the honourable member for Naini Tal will accept my assurance on that point and will not consider it necessary to press his amendment. I can assure him that it is our intention to bring it into force at the very earliest date that may be consistent with the Government of India Act; that is our desire. As to the arguments which have been advanced for postponing the date, well, they are arguments which will not bear a moment's examination. As has already been pointed out, the Royal Commission on Agriculture has nothing whatever to do with the tenancy law; it is concerned only with questions of agriculture proper. The terms of reference of the Commission, I believe, expressly lay down that that Commission is not to inquire into questions of the relations between landlords and tenants. Then, Sir, it has been said that it is inconvenient that a Tenancy Act should come into force other than at the beginning of an agricultural year. As has been pointed out, Act II of 1901 came into force on the 1st of January of the year 1902, and I have never heard it suggested that the smallest inconvenience was caused. Again, the Oudh Rent Act did not come into force at the beginning of agricultural year. Lastly, the honourable member for Shahjahanpur said that we must allow a year; otherwise the unfortunate tenants will not be able to master the provisions of this Act. I can hardly believe that the honourable member himself thinks that a kashtkar is going to sit down and study the provisions of this Act. He will do nothing of the sort. If he wants to know what his rights are, he will go to the gentlemen of the learned profession to which the honourable member himself belongs and ask them what the position is. I think the honourable member has not done justice to his own profession when he says that they cannot master this Bill unless they are allowed another year to study its provisions. There are no grounds whatever for not accepting the amendment which I propose; it is the usual course in Bills of this kind.

Pandit Govind Ballabh Pant: I beg to withdraw my amendment.

Amendment, by leave withdrawn.

Rao Sahib Abdul Hameed Khan: I beg to withdraw my amendment.

Amendment by leave withdrawn.

Question put that the words "on the first day of July, 1927" be substituted for the proposed amendment.

The House divided: Ayes, 24; Noes, 45.

Ayes

Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Lala Babu Lal.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryopal Singh.
Lala Dhakan Lal.
Rao Sahib Munwar Sardar Singh.
Bhaya Hanumat Prasad Singh.
Khan Bahadur Mr. Muhammad Aslam Sif
Rao Sahib Abdul Hameed Khan.
Nawabzada Muhammad Fajaz Ali Khan.

Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Shaikh Masud-us-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq Hussain.
Khan Bahadur Maulvi Muhammad Fasil-ur-Rahman Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Dr Ganesh Prasad.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan
Hon'ble Rai Rajeshwar Bili.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herschenroder.
Mr H. David.

Babu Khem Chand.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksona.
Babu Bhagwati Sahai Bedar.
Pandit Nandak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Jhanni Lal Pande.
Raja Narayan Pratap Singh.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyaya.
Rai Bahadur Thakur Hanuman Singh
Pandit Govind Ballabh Pant
Pandit Har Govind Pant.
Babu Ram Chandra Sinha.
Babu Sita Ram.
Maulvi Zabur-ud-din.
Raja Jagannath Baksh Singh.
Mr. E. M. Souter
Mr Tracey Guvin Jones.

The Council adjourned till the following day.

APPENDIX A.(See page 923 *supra*.)**IN THE COURT OF G. K. DARLING, Esq., I.O.S., DISTRICT
MAGISTRATE OF JHANSI DISTRICT.****CASE No. 1 of 1926.**

King-Emperor *Complainant,*
versus

- (1) Musawar Husain (not arrested).
- (2) Sultan, son of Muhammad Ali.
- (3) Rustam Ali, son of Ghulam Mustafa
- (4) Abdul Shakur, son of Qadir Baksh.
- (5) Omar Ali, son of Mir Ali.
- (6) Muhammad Ismail, son of Inait Husain.
- (7) Gajadhar Prasad, son of Raghunandan Prasad.
- (8) Rameshwar, son of Behari Lal.
- (9) Piare Lal, son of Brij Ballabh.
- (10) Kashi Ram, son of Khunni Lal.
- (11) Chhidu Lal, son of Bhup Singh.
- (12) Jhandu Singh, son of Ishwar Singh.
- (13) Bali Khan, son of Jawar Khan.
- (14) Shamsuddin, son of Qadir Baksh.
- (15) Rajab, son of Abdullah.
- (16) Kashi Ram, son of Gyasi.
- (17) Fateh Singh, son of Suraj Pal.
- (18) Dal Chand, son of Gyasi Ram.

*Charged under section 107, Criminal Procedure Code.**Date of institution*—June 21, 1926.*Police station*—New Abad, Jhansi.**DISTRICT MAGISTRATE.**

As you know, feelings are very strained in Garhya Phatak and Puliya No. 9. There is no recognized leader of any community. It is my experience that no thanadar or inspector can prevent trouble arising in these places, no matter how popular he may be. We have always had trouble there which has only been stopped by a show of force.

I am of opinion that it is advisable to bind down under section 107, Criminal Procedure Code, a few of the leading spirits on both sides. I do not think this will be in any way provocative. On the contrary, I think it will have the opposite effect. This course of action has been followed in previous years. I attach a list of men who I think should be bound over.

(Sd.) J. E. FIFE,

S. P.

21-6-1926.

IN THE COURT OF G. K. DARLING, Esq., I.O.S., DISTRICT
MAGISTRATE OF JHANSI DISTRICT.

CASE No. 1 OF 1926.

King-Emperor *Complainant,*

versus

- | | | |
|---|-----|-----------------|
| (1) Musawar Husain (not arrested) .. | ... | |
| (2) Sultan, son of Muhammad Ali .. | ... | |
| (3) Rustam Ali, son of Ghulam Mustafa .. | ... | |
| (4) Abdul Shakur, son of Qadir Baksh .. | ... | |
| (5) Omar Ali, son of Mir Ali .. | ... | |
| (6) Muhammad Ismail, son of Inait Husain .. | ... | |
| (7) Gajadhar Prasad, son of Raghunandan Prasad .. | ... | |
| (8) Rameshwar, son of Behari Lal .. | ... | |
| (9) Piare Lal, son of Brij Ballabh .. | ... | |
| (10) Kashi Ram, son of Khunni Lal .. | ... | <i>Accused.</i> |
| (11) Chhidu Lal, son of Bhup Singh .. | ... | |
| (12) Jhandu Singh, son of Ishwar Singh .. | ... | |
| (13) Bali Khan, son of Jawar Khan .. | ... | |
| (14) Shamsuddin, son of Qadir Baksh .. | ... | |
| (15) Rajab, son of Abdullah .. | ... | |
| (16) Kashi Ram, son of Gyasi .. | ... | |
| (17) Fateh Singh, son of Suraj Pal .. | ... | |
| (18) Dal Chand, son of Gyasi Ram .. | ... | |

Charged under section 107, Criminal Procedure Code.

Date of institution--June 21, 1926.

Police station--New Abad, Jhansi.

Copy of report of station officer, Jhansi, to the District Magistrate.

Police station New Jhansi.

SIR,

I beg to request that following persons are likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace, disturb the public tranquillity in Garhia Phatak and Pulia No. 9 in connexion with Bakra Id. So I request that the following persons must be bound over under section 107, Criminal Procedure Code.

Muhammadans of Garhia Phatak.

- (1) Musawar Husain, son of Rahim Bux.
- (2) Sultan, son of Muhammad Ali.
- (3) Rustam Ali, son of Ghulam Mustafa.
- (4) Abdul Shakur, son of Qadir Baksh.
- (5) Omar Ali, son of Mir Ali.
- (6) Muhammad Ismail, son of Inait Husain.

Hindus.

- (1) Gajadhar Prasad, son of Raghunandan Pratad, Brahman.
- (2) Rameshwar, son of Behari Lal, Brahman.
- (3) Piare Lal, son of Brij Ballabh, Bania.
- (4) Kashi Ram, son of Khunni Lal, Brahman.
- (5) Chhidu Lal, son of Bhup. Singh, carpenter.
- (6) Jhandu Singh, son of Ishwar Singh.

Muhammadans P. No. 9.

- (1) Bali Khan, son of Jawar Khan.
- (2) Shamsuddin, son of Qadir Baksh.
- (3) Rajab, son of Abdullah.

Hindus, P. No. 9.

- (1) Kashi Ram, son of Gyasi, Dhemar.
- (2) Fateh Singh, son of Suraj Pal.
- (3) Dal Chaud, son of Gyasi Ram, Brahman.

Y. M. O. S.

(Sd) M. C. SINGH,

New Jhansi.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Thursday, July 29, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m.
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT:

(80)

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Sa'id Khan
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. B. Tildard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. E. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. O. Desanges.
Mr. H. David.
Babu Khem Chand.
Babu Narayan Prasad Ayora.
Babu Sangam Lal.
Babu Mohan Lal Saksona.
Babu Jai Narayan Chaudhri
Babu Bhagwati Sahai Bedar.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.
Lala Babu Lal.
Thakur Rajkumar Singh.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Kharagjit Misra.
Raja Suryapal Singh.
Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.

Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Jhanni Lal Pande.
Raja Narayan Pratap Singh.
Pandit Sri Krishna Dutt Faliwal.
Babu Parsidh Narayan Anad.
Pandit Yajna Narayan Upadhyaya.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Bavi Pratap Narayan
Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Pandit Har Govind Pant.
Babu Ram Chandra Sinha.
Rai Bahadur Thakur Mahal Singh.
Babu Sita Ram.
Khan Bahadur Mr. Muhammad Aslam Saif.
Maulvi Zahir-ud-din.
Rao Sahib Abdul Hameed Khan.
Nawabzada Muhammad Ejaz Ali Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-us-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq
Husain.
Khan Bahadur Maulvi Muhammad Fazi-ur-
Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Mr. Ashiq Husain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Qazi Habib Ashraf.
Khan Bahadur Chaudhri Muhammad Ra-
shid-ud-din Ashraf.
Rai Bahadur Lala Mathura Prasad Meh-
rotra.
Raja Jagannath Bakhsh Singh.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.
Rai Bahadur Babu Vikramajit Singh
Dr. Ganesh Prasad.

THE AGRA TENANCY BILL.

The Hon'ble the President : Item no. 1 on the order paper : The Hon'ble the Finance Member.

(The Hon'ble Sir Sam O'Donnell walked to the dais and handed over a sealed envelope.)

The Hon'ble the President : The following message from His Excellency the Governor has just been handed to me by the Hon'ble the Finance Member.

GENTLEMEN OF THE LEGISLATIVE COUNCIL.—I thank you for the time and labour which you have so far expended upon the consideration of the Agra Tenancy Bill. The measure is necessarily a complex and difficult one. It affects the interests of literally millions of people. There is hardly a member of the Council who has not some direct interest in and some personal knowledge of many of the questions involved : and it is a matter of satisfaction to my Government that the measure has progressed thus far through Council and that the discussions have been conducted in so amicable a spirit.

2. You may be sure that no Government would have promoted a Bill upon so difficult a topic—a Bill which could not in the nature of the case possibly be acceptable to all parties—without a strong conviction that it was their simple duty to do so. I want to recall briefly the reasons which led us to take the matter up. In the main there were three. First, there was the belief shared, I think, by all of us who had been assistant collectors and collectors in Agra, that the existing tenancy law in that province was inherently defective. Even as an assistant collector I marvelled at the imperfections of the twelve years' rule for occupancy rights, and deplored the manner of its actual working. The volume of litigation over ejectments and enhancements seemed to me a huge and regrettable burden upon all concerned, while the procedure prescribed in enhancement cases was frankly unworkable. Secondly, these personal opinions were confirmed by the conclusion recorded in Sir James Meston's time, after the question had been thoroughly examined by a conference of very experienced officers, that the existing law required drastic alteration, even though the period of war was not held to be the right time for making disturbing changes. Thirdly, there were the agrarian disturbances of 1922 which led my predecessor's Government to undertake the revision of the Oudh Rent Act and drove us to two conclusions : first, that it was inequitable and in the long run impossible to leave the unprotected tenants of the Agra province in a less secure position than the new statutory tenants in Oudh : and secondly (when we remembered what had occurred in Oudh and how near portions of that province temporarily were to violent disorder), that it was our duty to take the matter up and deal with it at a time when the province was happily at peace, so as to remove in good time such grounds for agrarian discontent as might afford fuel for grave mischief, if such another wave of ferment and excitement as occurred in 1922 were to impinge again upon the province.

3. The decision to legislate was therefore a considered one. We knew very well the difficulties. We had no hope of satisfying every one : but we decided to steer a middle course and to go ahead. No one can possibly say that we have been hasty in our methods. We appointed a select committee two years ago to advise what changes should be made in the existing law. That committee reported in July, 1924. We framed a Bill in accordance with their recommendations and we secured the

necessary sanction of higher authority. The Bill was introduced in March last. The select committee sat upon it in May: and you have since June 28 been engaged in considering its proposals.

4. In one of the earliest speeches which I made in Lucknow I claimed to be neither a pro-tenant nor a pro-landlord man. I said that I should make it my aim to hold the balance even between both interests, and to emphasize their essential identity from the point of view of the provincial welfare. I think that our legislative proposals bear out this earlier profession. We have not swung violently to one side or the other. For the tenants we have never concealed our view that greater security was required. We ourselves would have liked to make occupancy rights universal. Against that course there was the precedent of the Oudh Rent Act and the patent difficulty of getting a Legislature on which the landlords predominated to accept our views. We contented ourselves therefore with asking for statutory rights. We recognized very clearly that this was tantamount to asking the landlords of the province to make important concessions. We trusted partly to their generosity, partly to their political foresight, which must have warned them that the time was ripe for advance and that it would be wiser to accept moderate concessions now than possibly to have thrust upon them hereafter proposals framed in a spirit of definite hostility to their order. But we felt that in asking the landlords for concessions we should ourselves be also prepared to make concessions to them. Accordingly we have embodied, either in this Bill or in another Bill which will shortly come before you, proposals for facilitating the realization of rents and the acquisition of home farms; proposals for extending the term of settlement and for limiting the degree of enhancement. Those are the concessions which we offer to the landlords. Some of them involve substantial loss to the public revenues, and without in our opinion any direct and demonstrable justification. But we accepted that consequence for the sake of a greater end. We were very anxious to get the principle of statutory rights recognized, and for that purpose we resolved on concessions to the landlords about the abstract equity of some of which we were doubtful. I believe that our proposals constituted a fair and reasonable compromise, and that they absolve us from any suspicion of having allowed one interest or the other to prevail unduly in our deliberations.

5. Gentlemen, you have accepted the principle of statutory rights for the unprotected tenantry in Agra. I welcome that decision as beneficial to the whole province. I think it a just decision, and as it cannot have been an easy one to take for a legislative body constituted as this one is, I congratulate the Council upon their courage in taking it. The concession of statutory rights is a matter of more moment than any of the remaining points which I have yet to mention and upon which the view taken by you is less welcome to the Government.

6. In the first place I will refer very briefly to certain changes made in the Bill which the Government are far from regarding as improvements, but upon which they are none the less prepared, with some hesitation, to accept the view taken by the Legislature out of their strong desire to confine the field of difference between the Council and themselves to the narrowest limits possible.

7. The first concerns the changes made in clause 24 relating to the succession of male tenants. The Council have preferred the

[Message from H. E. the Governor.]

provisions of the existing Act to those included in the Bill. In their belief that the existing provisions are to some extent defective and a source of litigation the Government are supported by a great volume of evidence. At the same time they are not prepared to maintain that the existing law is so unworkable as to render its alteration imperative. I have therefore no further comment upon this point to make.

8. The second relates to abatement (clause 54). The Bill as introduced allowed a tenant to apply for an abatement of his rent on the ground that it was so high in comparison with a fair and equitable rate as to be excessive. The Council have adopted an amendment which substitutes as the ground for abatement a fall in prices during the currency of the existing rent. The Government recognize that this amendment will in certain conditions give relief to the tenant. But a rent may be beyond the capacity of a tenant to pay even though there has been no fall in prices since it was agreed on; and they regret that the Council have not accepted the more liberal provision in the Bill as introduced. At the same time they recognize that the need for such a provision may depend largely on factors which cannot be foreseen, and do not therefore regard its restoration as essential.

9. A third point concerns the changes made by Council in clause 50 (2) and clause 56 (4). The Government remain of the opinion that for the reasons given by the Hon'ble the Finance Member in the course of the debate, one-third is a more reasonable limit for the enhancement of rent than one-fourth; and that it is more scientific to fix the period for the periodic revision of controlled rents at one-third rather than at one-half of the period of currency of a settlement. At the same time they recognize that the movement of prices cannot be foreseen, and they are prepared to take whatever risks are involved in the changes made by the Council.

10. The fourth relates to the provision inserted by the Council in clause 179 to the effect that the sale-officer shall be solely responsible for any loss or damage to distrained property due to his negligence. A provision of this kind which is concerned with the conduct of a public servant is clearly out of place in a Tenancy Bill, the purpose of which is to regulate the relations between landlord and tenant; but the Government regard it as likely to be inoperative.

11. The fifth concerns the addition made to clause 270 (1) (a) to the effect that the third party to whom a tenant alleges that he has paid rent in good faith must be impleaded in the suit at the cost of the plaintiff. This complicates a suit intended solely for the purpose of deciding a simple question between the tenant and the person claiming rent from him, and further deprives the court of the discretion which it should always have in awarding costs. In both respects the Government regard it as a blemish upon the Bill, but they do not think the consequences are likely to be serious.

12. I pass on to some graver points of difference, upon which the Government feel that they cannot acquiesce in the Council's alterations of the Bill without abandoning essential features of their project. I am glad to find that such points of substantial difference are very few in number.

13. The first of these essential points relates to clause 4 (e). The Council accepted the scale proposed by the committee of 192* in their draft Bill, but confined its application to *sir* acquired under sub-clause (e) instead of to the aggregate of *sir* however acquired. Now it must be remembered that *sir* rights are a special privilege which is susceptible of misuse. We are perfectly willing to give facilities for the further acquisition of *sir*; but in due measure and for good reason. The only real justification for increasing the *sir* area is not to provide large reserves within which no tenant rights can accrue, but to provide proprietors with amply sufficient land for their own cultivation. Now clause 4 (d) which will convert into *sir* all the land normally cultivated at present by proprietors, actually adds to the *sir* area over two million acres, no mean proportion of the whole cultivated area of the Agra province. Clause 4 (e) is meant to provide *sir* in future for those proprietors who have not acquired otherwise a sufficient area of *sir* for their own cultivation. We do not want to make it easy for landlords to let their *sir* to tenants, because that is contrary to the fundamental conception of *sir*. But the Council's amendment has precisely the result which we wish to avoid. The landlord will be able to sub-let the whole of his *sir* obtained under sub-clauses (a), (b), (c) and (d), while he cultivates as *khudkash* whatever land comes into his hands from time to time by determination of tenancy. When he had cultivated such land as *khudkash* for ten years, it would under the Council's amendment automatically become his *sir*, when he could sub-let it and begin the process over again. The amendment actually opens a door by which in some cases a landlord could convert every acre of his land into *sir* and thereby prevent the accrual of tenant rights in any of it. It clearly strikes at the basic principle which the Council have accepted. The amendment is not one which the Government can desire to see embodied in the law. I recommend therefore to the Council that the first proviso to clause 4 (e) should run as follows:—

Provided, first, that the area of *sir* which may be acquired by a landlord or permanent tenure-holder under sub-clause (e) when added to the area which is already the *sir* of the landlord or permanent tenure-holder under sub-clauses (a), (b), (c) and (d) shall not exceed in the aggregate the following scale:—

14. The next matter which I wish to bring before the Council is the changes made by Council in clause 40. Let me state these as clearly and briefly as I can. The Bill as amended by the select committee proposed, roughly, to allow a proprietor to acquire land from his tenant if the collector was satisfied that reasonable grounds existed, subject to certain special limitations of purpose in the case of occupancy tenants, and also subject to the payment of certain compensation in land or money and also to the provision in the case of occupancy tenants that no portion of small holdings should be acquired except for the purpose of agricultural development. The changes made by Council come to this. In the case of ex-proprietary and occupancy tenants they simply limit the purposes for which land may be acquired, leaving the other relevant provisions as they stand. They are kinder to tenants of these two particular classes than the draft Bill was, and the Government have no reason to demur to the change. But to the statutory tenants the

[Message from H. E. the Governor.]

Council's amendments are far less favourable. They remove the discretion of the collector in the most important case of all (that is when the landlord applies for land for the purpose of his own cultivation) and for it they substitute a 25 per cent. addition to the compensation payable and the stipulation that the holding shall not be reduced below four acres. The Government view these changes with great concern and feel that they cannot be a party to them. They have examined the question whether by minor changes, such as increasing the rate of compensation and raising the minimum size of the irreducible holding to say six acres, the statutory tenant would be sufficiently protected. But holdings vary so much in size that a minimum, which might suffice to secure a subsistence to the tenant in some districts, would operate to make the clause a dead letter in other districts where holdings are much smaller. Any automatic limitation of the kind would operate most unevenly. In eastern districts the landlord might be prevented from acquiring, even in cases where good and genuine ground existed, and in western districts a tenant, whose standard of living is based on the surplus derivable from a holding of say ten acres, might even without good and sufficient reason suffer real hardship by the reduction of his holding to even six acres. The Government's conclusion is that the interposition of the collector's discretion is the only real safeguard against abuse of the provisions for the acquisition of a statutory tenant's holding. So long as there is left one purpose for which the collector could not refuse acquisition, the tenant's security is jeopardized. It is likely, indeed, that with the safeguards accepted by the Council landlords would not actually acquire much land which they did not require for their legitimate needs. But the existence of the power to acquire land at their pleasure could be used, and by some landlords would be used, as a lever to extort money from tenants as the price of leaving them undisturbed. The risk is one which cannot be obviated by any automatic device. It can be obviated only by giving to some responsible officer, who can inquire into and take account of all relevant circumstances, the power to refuse acquisition on all occasions, if he does not find that reasonable grounds exist in favour of it. Without a safeguard of this nature the security and with it the contentment of the statutory tenant which it is our object to secure will not be attained.

After giving the question my most anxious consideration I recommend to the Council that for clauses 40 and 41 of the Bill as passed the following clauses be substituted:—

40. (1) A landlord may apply to the collector to acquire for him land held by an ex-proprietary or occupancy tenant for the purpose of farming on improved lines; and the collector shall, if he is satisfied that reasonable grounds exist, order the acquisition of the land applied for, or part thereof, and shall at the same time award the tenant the compensation to which he is entitled under sub-section (2) of this section, and shall thereupon order the ejectment of the tenant from the land acquired.

(2) The collector before passing an order of ejectment under sub-section (1) of this section shall award to the tenant land with similar advantages in the same village, or, with the consent of the tenant, in

another village; but to such extent as such land is not available, the collector shall award monetary compensation amounting to six times the annual rental value of the land acquired, calculated at the rates prescribed for statutory tenants in sub-section 3(b) or sub-section (4) of section 59. Such compensation shall be in addition to the amount of compensation, if any, due for improvements.

41. (1) A landlord or a permanent tenure-holder may apply to the collector to acquire for him land held by a statutory tenant or the heir of a statutory tenant for any of the following purposes, namely,—

Acquisition of land by landlord or permanent tenure-holder from his statutory tenant or heir of a statutory tenant.

(a) to (b) of the Bill of the select committee.

(2) The collector shall, if he is satisfied that reasonable grounds exist, order the acquisition of the land applied for or part thereof, and shall at the same time award to the tenant the compensation to which he is entitled under sub-section (3) of this section, and shall thereupon order the ejectment of the tenant from the land acquired:

Provided that acquisition shall not be ordered for the purposes specified in (c) or (d) of sub-section (1) of this section, when suitable land not included in any holding is available.

(3) The collector, before passing an order of ejectment under sub-section (2) of this section, shall award to the tenant monetary compensation which shall not exceed four times the annual rental value of the land acquired, estimated at the rates prescribed for statutory tenants in sub-section (3)(b) or sub-section (4) of section 59. Such compensation shall be in addition to the amount of compensation, if any, due for improvements.

42. (1) When a tenant has been ejected under section 40 or section 41, he shall be entitled—

Rights of a tenant whose land has been acquired under section 40 or section 41.

(a) to a reduction of rent to be determined by the collector proportionate to the rental value of the land acquired,

(b) to retain the remainder of the holding, if any, with the same right as before,

(c) to be reinstated in the land acquired in the circumstances and on the conditions specified in sub-sections (2) and (3) of this section.

(2) If the person for whom the land was acquired—

(a) does not within two years from the date of ejectment of the tenant use it for the purpose for which it was acquired, or

(b) within the said period of two years uses it for any other purpose, or

(c) in the case of land acquired for any of the purposes specified in (a), (b), (c) or (d) of sub-section (1) of section 41, lets the land to another person within six years of the date of the ejectment of the tenant,

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the dispossessed tenant may apply to the collector—

in case (a) of this sub-section, on the expiry of the period of two years,

in case (b) of this sub-section, as soon as the land is used for any other purpose,

in case (c) of this sub-section, as soon as the land is let to another person,

to reinstate him in the land from which he was dispossessed :

Provided that he has not been admitted by the person for whom the land was acquired to the occupation of other land under any written agreement, whereby he has waived his right under this sub-section.

(3) The collector on receiving an application under sub-section (2) of this section shall, if the conditions specified in (a), (b) or (c) of sub section (2) of this section are fulfilled, reinstate the dispossessed tenant in the land acquired with the same rights and at the same rate of rent as at the date of his dispossession, on condition that such tenant restores to the person for whom the land was acquired the land or money or both awarded to him by way of compensation :

Provided that, so far as such compensation was money, the tenant shall be entitled to deduct by way of compensation for dispossession such amount as the collector may determine :

Provided, further, that the amount so deducted shall not exceed the annual rent payable on the land acquired for each year of the period of dispossession.

The effect is briefly to extend to the statutory tenant the protection afforded by the collector's deliberate judgement of the circumstances, and to remove the automatic protection of an irreducible minimum of area. The Government are confident that these provisions will give the landlords all the facilities that they really need. The experience of Oudh where there are analogous provisions in the law shows that applications are refused only when they are made for some ulterior reason.

15. The next matter which I invite Council to consider is a question not of principle but of machinery. It relates to the striking out of clauses 55 to 59 as they stood in the Bill as accepted by the select Committee and the substitution of a new clause enjoining fixation of rent after local inspection at the rate generally payable by tenants of the same class for land of the same class. The point is too familiar to all members of the Council to need much elaboration. It is a question whether or no we shall adopt the roster year system for the determination of rent. This system found a place in the Board's Bill of 1918, and was accepted with one dissentient by the committee of 1924. It has already been included in the Oudh Rent Act of 1921. It is far older in conception than the Settlement Committee of 1922, and there is no substance whatever in the suggestion that it is an ingenious device for supplementing any loss of revenue which may ensue from the proposals of the latter body. The simple reason for adopting it is this—that in the judgement of experts and the experience of ordinary revenue officers alike the extant procedure for determining controlled rents within the period of settlement was an unworkable system. The

Council's amendment practically maintains this unworkable system. I am reluctant to take you at any length over such well-trodden ground. The defects of the present arrangement have been described again and again: by the committee of 1918, and again in length by the committee of 1924, and again very clearly in the speech of the Hon'ble the Finance Member on July 9. The inherent vice of the existing system is this: there are no prevailing rates on which the courts can base themselves. Recorded rentals do not give rates. Rates vary in the occupancy area according to the age of the holding; and non-occupancy rates vary according as the age of the tenancy is one or eleven years. Nor can the courts ascertain soil rates. Holdings are lump-rented and comprise a variety of classes of soil. It is only at settlement after an elaborate analysis of rents over a large area—perhaps an area of some hundreds of square miles—that a sufficiently large number of single-soil holdings can be so segregated as to yield reliable soil rates. The existing system sets the revenue courts a task to which they are not and cannot be equal: infinite time and labour is expended in attaining results which are desperately open to attack in appeal. The natural tendency is to adjourn the cases repeatedly and by a series of adjournments to force the parties to a compromise. But that is a negation of the system which we profess to maintain. The roster year system on the other hand is in essence the system used by settlement courts for proceedings under section 87 of Act III of 1901. It has been thoroughly tested and proved itself speedy and satisfactory. It can be shown to be working smoothly in Oudh. After full consideration therefore the Government have decided that it is their duty to press for the adoption of the more equitable, more scientific and more practical procedure of the roster year. I recommend that clauses 55, 56, 57, 58 and 59 of the Bill should stand as when the Bill left the select committee, except that the words "20 years" should be substituted for the words "approximately one-third of the ordinary term of settlement sanctioned for temporarily-settled districts" in the second and third lines of clause 56(4).

16. The next point to which I would draw attention concerns clause 72(5). As the Bill left the select committee it provided that when remissions of rent materially reduced assets, the revenue authorities should consider any claim preferred by the landlord for a remission of revenue. The amendment carried by Council omits the qualification of "materially" and makes obligatory a reduction of revenue. It is frankly a change made in the interests of the landlords. But the Government, who have to look to both sides, cannot regard it as either just or expedient that every petty remission of rent, as in a suit for arrears, should render imperative a proportionate reduction of revenue. Their reasons are very simple. The assets on which revenue is assessed already take account of petty losses which the proprietor may incur, because they include deductions for instability and short collections. The landlord is insured already against the loss from which the amendment seeks to guard him. Further, it is contrary to a root principle of revenue assessment that the revenue demand should be liable to small alterations from year to year. The revenue is assessed for the whole period of settlement: it is not increased on account of additions, however permanent and however substantial, to assets during that period; and it is unreasonable that it should be reduced during the same period, because a landlord is temporarily unable to realize a petty amount of

[Message from H. E. the Governor.]

rent. For material reductions of assets the clause as it emerged from the select committee will make full provision.

I recommend accordingly that clause 72(5) be passed as it stood in the Bill as revised by the select committee.

17. The last point on which I have decided to make a recommendation to Council concerns the provisos to clause 80, sub-clause (3), and clause 81, sub-clause (4), in respect of which the amendments made by Council have the effect of destroying a provision which has been inserted out of desire to show consideration for tenants in difficulty. The select committee proposed that the courts might before ordering the ejectment of a tenant for arrears of rent give him three extensions of time in which to pay up and avoid ejectment, the three extensions not to exceed an aggregate total of six months. The Council's amendments cut down the number of reprieves to two, and their aggregate duration to three months. But the period of six months was deliberately chosen, because it enables the court if it sees fit to give the tenant the chance of raising another crop from the proceeds of which he may pay up his arrears and escape ejectment. There are times when such a provision is clearly necessary if wholesale ejectments are to be avoided, as when the arrears are due to no fault of the tenant but to a succession of bad seasons. But, apart from any general necessity, the provision seems to the Government to be little more than one enabling reasonable consideration to be shown in deserving cases. It rests with the courts to exercise their judgement, and it is open to the landlord to oppose the grant of further time, if he has good grounds for doing so. The concession is not really one which makes a heavy demand upon the landlord's magnanimity.

I recommend that the proviso to clause 80(3) and the proviso to clause 81(4) be passed in the form in which they were accepted by the select committee.

18. The changes which I have recommended to Council will entail the following consequential amendments :—

A. Consequential on amendments recommended to clauses 40, 41 and 42.

In Schedule IV, group E, the following changes be made :—

(1) Serial 3 be omitted altogether.

(2) Serial 4 be numbered serial 3 and read as follows :—

Serial no.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court fees.
3	41	To acquire land	Do.	Do.	Ditto.

(3) Serial 5 to be re-numbered 4 and in the second column for "41, proviso" be substituted "42."

B. Consequential on the recommended restoration of clauses 55 to 59 to the form of the draft Bill of the select committee.

(1) *Clause 44.* For the words "paid by statutory tenants for similar land with similar advantages," adopted by Council at the end of the clause, substitute "applicable to statutory tenants under section 59" as in the draft Bill.

(2) *Clause 46.* For the words "at the rate payable by statutory tenants for similar land with similar advantages," adopted by Council at the end of the clause, substitute "at the appropriate rate specified in section 59" as in the draft Bill.

(3) *Clause 50(2).* For the words "rate payable by that class of tenant for similar land with similar advantages," adopted by Council, substitute "circle or village rates which are applicable under section 59 to that class of tenant" as in the draft Bill.

(4) *Clause 53(a).* At the end of the sub-clause restore the words "the fair and equitable rates referred to above shall be the rates specified in section 59," which were deleted by Council.

(5) *Clause 61 (3).* This sub-clause which was deleted by Council be restored.

(6) *Clause 64 (1).* For the words "fair and equitable rates payable by tenants of the same class for land of the same class or classes of soil determined in accordance with the procedure hereinbefore laid down," adopted by Council, substitute the words "the sanctioned rates and records, unless for special reasons to be recorded the court sees reason to depart from them" as they stood in the draft Bill.

(7) *Clause 67 (1)(a).* Before the words "twenty years," adopted by Council, insert the words "a period of".

19. Certain purely formal amendments which are designed to remove defects in the drafting of the Bill as it has emerged from the debates are also necessary. These are detailed below:—

Clause 3(6).—That for the definition of landlord as amended be substituted the following:—

"and 'landlord' means the proprietor of a mahal or of a share or specific plot therein."

Consequential amendments on the definition of "landlord" in clause 3(6).

- (1) *Clause 4.*—That the word "landlord" be substituted for the word "proprietor", wherever the word "proprietor" occurs in clause 4.
- (2) *Clause 7.*—That the word "landlord" be substituted for the word "proprietor" in the second proviso of clause 7, as amended by Council.
- (3) *Clause 11.*—That the word "landlord" be substituted for the words "proprietor of the mahal" in line 5 of clause 11.
- (4) *Clause 14.*—That the word "landlord" be substituted for the word "proprietor," wherever the word "proprietor" occurs in clause 14(1) and 14(2).
- (5) *Clause 15.*—That the word "landlord" be substituted for the word "proprietor," wherever the word "proprietor" occurs in clause 15(2).

[Message from H. E. the Governor.]

- (6) *Clause 185(c).*—That in clause 185(c) the word "landlord" be substituted for the word "proprietor," wherever the word "proprietor" occurs.
- (7) *Clause 188(1)(b).*—That in clause 188(1)(b) the word "landlord" be substituted for the word "proprietor," wherever the word "proprietor" occurs.

Page 1, last two lines, clause 3(3).—That in the amended last paragraph after the words "or its value" and before the word "payable," the words "deliverable or" be inserted.

Page 3, clause 4.—That the words "in accordance with the following provision" at the end of clause 4(e), immediately before the proviso be excised.

Page 4, clause 4.—That in the proviso after the scale the word "secondly" be inserted after the word "provided."

Page 7, clause 16.—That the paragraph inserted between the second and third paragraphs of the draft Bill read as follows:—"And every person (except in Bundelkhand) who is at or after the commencement of this Act a tenant of Government estates other than nazul land."

Page 7, clause 17(1).—That clause (a) of this sub-clause, as amended, read as follows:—

(a) a landlord or a permanent tenure-holder,

(j) a Hindu woman having a limited estate, with the written consent of the nearest reversioner or the sanction of the district judge;

That clause (j) be placed after clause (i) in this sub-clause.

That clause (b) of this sub-clause read as follows:—

"a lambardar, with the written concurrence of all the co-sharers whom he represents, and, if any co-sharer is a minor or otherwise unable to act, with the sanction of the district judge obtained on the application of the natural or certificated guardian of such co-sharer."

That the proviso added to clause (g) of this sub-clause read as follows:—

"Provided that, if the minor has a father or a brother as his natural guardian, the written consent of the natural guardian shall be deemed sufficient."

Page 9, clause 18(7).—That for the words "competent civil court" at the end of this sub-clause be substituted the words "civil court which has jurisdiction to hear appeals from the court in which the question of proprietary right was decided."

Page 9, clause 19.—That at the beginning of clause 19 be added:—

"Subject to the provisions of sub-section (3) of section (8)".

Page 9, clause 19.—That in sub-clause (a) of this clause as amended the words "or a fixed-rate tenant" be struck out in the phrase "or a tenant holding from a permanent tenure-holder or a fixed-rate tenant."

Page 10, clause 19.—That clause (h) of the second proviso to clause 19 as amended be removed from the second proviso and that it be placed in the third proviso which will then read as follows:—

(3) Provided, thirdly, that no statutory rights shall accrue in—

(a) lands notified by Government in the Gazette as tea gardens before the commencement of this Act;

(b) lands used for casual or occasional cultivation in the bed of a river.

Page 10, clause 20.—That proviso (2) in the Bill be re-numbered (3), as a new proviso (2) has been inserted in the Bill.

Page 12, clause 25(1).—That between the words "in the case of a widow" and "in section 24" the words "of class II" be inserted.

Page 13, clause 29 (8).—That this sub-clause read as follows:—

"all sub-leases shall terminate with the term of settlement."

Page 14, clause 33.—That in clause 33, line 3, after the word "holds" the following words be inserted:—

"or by the expiry of the term of settlement."

Page 15, clause 37.—That this clause read as follows:—

"A division of a holding or distribution of the rent payable in respect of a holding or any portion thereof, or such division and distribution shall be effected only (a) by agreement between the co-tenants, or (b) by the decree in a suit instituted under this section by one or more of the co-tenants against others:

"Provided that such division or distribution shall not be binding on the landholder unless he agrees thereto in writing."

Page 74, Schedule IV, group B.—That the words "or distribution of rent or both" be added after "For division of a holding" in column 3 of serial number 1, and that for the figures "37(2)" in column 2 the figure "37" be substituted.

Page 15, clause 38.—That in line 4 of the clause the words "or permanent tenure-holder" be inserted after the word "landlord."

Page 24, clause 65.—That in line 2 of the clause as amended after "section 54" the figure "(1)" be deleted.

Pages 26, 27, clause 73(7).—That this sub-clause be re-numbered (3) and be inserted after sub-clause (2).

Page 26, clause 73(3) and (4).—That these sub-clauses be re-numbered sub-clauses (1) and (2) of clause 74, that after the figure (2) in line 2 of sub-clause (3) of the present clause 73 be added the words "of section 73," and that after the word "remitted" in line 2 and after the word "suspended" in line 4 of sub-clause (4) of the present clause 73 be added the words "in accordance with the provisions of section 73" in both places.

Page 26, clause 73(5).—That this sub-clause be re-numbered clause 75, and that after the word "suspended" in line 1 be added the words "in accordance with the provisions of section 73."

Page 27, clause 73(6).—That this sub-clause be re-numbered 76, and that after the word "remitted" in line 2 and after the word "suspended" in line 4 be added the words "in accordance with the provisions of section 73" in both places.

[Message from H. E. the Governor.]

Pages 35, 36, clause 107(2).—That in lines 3, 4 and 5 the words from "belonging to" in line 3 to "VII and" in line 5 be omitted.

Page 59, clause 219.—That in line 1 for the word "and" between the figures "73" and "74" a comma be substituted, and that after the figure "74" be added a comma and the words "75 and 76."

Page 60, clause 225.—That clause 225 of the Bill be numbered as sub-clause (1) of clause 225.

That the additional clause 229A be numbered as sub-clause (2) of clause 225.

Page 65, clause 265.—That in proviso (c) for the words "under section 17 of the Act" the words "otherwise than in accordance with the provisions of section 17 of this Act" be substituted.

Page 68, heading to Chapter XVIII.—That the heading "Power to make rules" in Chapter XVIII be deleted and the word "Miscellaneous" be substituted.

Page 69, clause 276.—That in sub-clause (2) of clause 276 as amended the words "by a landlord" be inserted after the word "instituted" in line 2.

That in line 5 "plaintiff" be substituted for "plaintiffs" and "him" for "them."

That in proviso (a), line 3, for the word "a" before "landlord" "the" be substituted.

Page 70, First schedule.—That for item I be substituted the following:—

A.—The districts of Almora and Garhwal.

B.—(1) The following villages of the Tarai and Bhabar Government estates in the district of Naini Tal:—

<i>Serial No.</i>	<i>Names of villages.</i>
1	Bajawala.
2	Bannakhera.
3	Bannakhera Sani.
4	Banskhera.
5	Banskheri.
6	Baraihni.
7	Bhainsia.
8	Bhajwanagla.
9	Bhikampur.
10	Bijai Rampura.
11	Chanakpur.
12	Gularia Gobra.
13	Gulzarpur.
14	Hazira.
15	Haripura.

<i>Serial No.</i>	<i>Names of villages.</i>
16	Harsan.
17	Khamari.
18	Maindaya Hattoo.
19	Rajpura No. 1.
20	Ratanpuri.
21	Somalpuri.
22	Sheopuri.
23	Thapaknagla.
24	Kelabandwari.
25	Faridpur.

PARGANA GADARPUR.

1	Alakhdei.
2	Andkhera.
3	Beria.
4	Bari Rain.
5	Buxaura.
6	Khanpur Pachham.
7	Khanpur.
8	Kulha.
9	Madnapur.
10	Maholi Jungle.
11	Mukandpur.
12	Nandpur.
13	Pipalia.
14	Kopa.
15	Jafarpur.
16	Gadarpuri.

NORTH OF KASHIPUR.

1	Kamlebpur.
2	Beria.
3	Lalitpur.
4	Karailpuri.
5	Thari.
6	Kandala.
7	Birpur Lachi.
8	Birpur Tara.
9	Rajpur.
10	Pipalsana.

[Message from H. E. the Governor.]

IN KHUSHALPUR CIRCLE.

<i>Serial No.</i>	<i>Names of villages.</i>
1	Khushalpur.
2	Lampur Moti.
3	Lampur Lachi.
4	Shahbazpur.

(2) The remainder of the district of Naini Lal [exclusive of the pargana of Kashipur and of the following villages in the Tarai subdivision:—

<i>Name of peshkari.</i>	<i>Name of village.</i>
Bazpur	... { Kankata. Kuwa Khara. Rajpura.
Kichha	... { Anjania. Piru Nagla. Daraui.
Kilpuri	... { Bijti. Bitha Akbar. Haldua. Malpuri. Matha. Nakatpura. Pipalia Nathu. Satepur. Sainjana. Sarkara.]

That for " II " be substituted the letter " C."

That for " III " be substituted the letter " D."

Accordingly with reference to section 72E of the Government of India Act and to rule 20C(1) of the United Provinces Legislative Council Rules, I recommend that the amendments above specified be made in the Bill as already shaped by Council and that the Bill as so amended be passed.

20. I am confident that the Council will receive this inevitably long message in the same deliberate temper as that in which I have laboured to frame it. To recapitulate, the Government were faced with what they believed to be an obligation to put through an obviously difficult, important and very contentious piece of legislation. They could not hope that it would be entirely acceptable to the Council. They are in fact very glad that the Council has accepted the main principles of their proposals. They realize that this result has not been attained without difficulty—indeed, at the price of some counter-proposals which, whether or not with the intention of their promoters, do certainly in the perception of Government destroy the main purpose of the Bill. It would be, in the judgement of Government, little short of a calamity to allow an obvious, acknowledged and overdue agrarian reform to be wrecked on a few points of difference between the majority party in the Council and

the Government who have promoted the Bill and won so large a measure of acceptance for it. The Government feel that the Bill cannot in all its present details become law. And yet after much reflection I put it to you that to lose this measure of reform, which we by common labour and mutual concession have brought so near fruition, would be little short of a disaster. I earnestly advise the Council to take the broadest possible view of their responsibilities, and to co-operate with the Government in accepting, even against their private inclinations, amendments which will place the Bill upon the statute-book. By so doing I believe that they will avert a collision of interests which must otherwise come ere long, and which when it does come may shake the peace and stability of this great province to the foundations.

The Hon'ble the President: Perhaps many honourable members do not know what rule 20C is which governs this case of the recommendations of His Excellency the Governor.

Rule 20C, part (2), says:—

“No dilatory motion shall be made in connexion with a Bill in respect of which a recommendation has been made (hereinafter referred to as a recommended Bill) without the consent of the member in charge of the Bill, and, if any such motion has been made but has not been carried prior to the communication to the Council of the recommendation, such motion shall not be put to the Council.

(3) Where during the passage of a Bill the Governor makes a recommendation in respect thereof, and any clause of the Bill has been agreed to, or any amendment has been made, in a form inconsistent with the form recommended, the member in charge of the Bill may move any amendment which, if accepted, would bring the Bill into the form recommended.”

I will just bring to the notice of honourable members in case they want to get time to consider over the amendments recommended by His Excellency the Governor the fact that they can only move a motion for it after they have obtained the consent of the member in charge of the Bill. Otherwise such motion cannot be put from the Chair.

Before I take up the recommendations of His Excellency the Governor I should like to go back to finish the first two clauses and the preamble. Yesterday I did not put clause 1 as amended to the House. There were certain amendments to it which were accepted, and I will now put the clause as amended.

CLAUSE 1.

Question that clause 1 as amended stand part of the Bill put and agreed to.

CLAUSE 2.

Question that clause 2 stand part of the Bill put and agreed to.

PREAMBLE.

Question that the Preamble stand part of the Bill put and agreed to.

Khan Bahadur Mr. Muhammad Ismail: I move with your permission for the adjournment of the House . . .

The Hon'ble the President : Not " House," but "debate."

Khan Bahadur Mr. Muhammad Ismail : I move for the adjournment of the debate till 11 o'clock tomorrow. I do not think it is necessary for me to give many reasons for it. The recommendations of His Excellency the Governor are extremely important and it is necessary that the members of the House should sit together and consider what they have got to say with regard to these recommendations.

The Hon ble the President : Has the honourable member obtained the consent of the member in charge of the Bill ?

The Hon'ble Sir Sam O'Donnell : The honourable member has obtained my consent to move the motion for adjournment of the debate.

Question that the debate be adjourned till tomorrow put and agreed to

The Council was then adjourned to the following day.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Friday, July 30, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m., Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT :

(83).

<p>Hon'ble Sir Sam O'Donnell. Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan. Hon'ble Rai Rajeshwar Bali. Hon'ble Thakur Rajendra Singh. Hon'ble Nawab Muhammad Yusuf. Mr. G. B. Lambert. Mr. E. A. H. Blunt. Kunwar Jagdish Prasad. Sir Ivo Elliott. Mr. P. H. Tillard. Mr. H. A. Lane. Mr. R. L. Yorke Mr. R. Burn. Mr. A. W. Pim. Mr. B. J. K. Hallows. Mr. E. L. Norton Mr. H. G. Billson. Mr. R. J. S. Dodd. Colonel A. W. R. Cochrane. Mr. A. H. Mackenzie. Mr. M. F. P. Herchenroder. Mr. H. C. Desanges. Mr. H. David. Babu Khem Chand. Babu Narayan Prasad Arora. Babu Sangam Lal. Babu Mohan Lal Saksena. Babu Bhagwati Sahai Bedar. Rai Jagdish Prasad Sahib. Chaudhri Jaswant Singh. Pandit Nanak Chand. Lala Babu Lal. Thakur Rajkumar Singh. Thakur Shiva Narayan Singh. Rai Bahadur Babu Ram Nath Bhargava. Rai Amba Prasad Sahib. Rai Bahadur Pandit Kharagjit Misra. Raja Suryopal Singh. Lala Dhakan Lal. Babu Nemi Saran. Chaudhri Badan Singh. Rao Sahib Kunwar Sardar Singh. Thakur Sadho Singh. Pandit Brijnandan Prasad Misra.</p>	<p>Pandit Jhanni Lal Pando. Raja Narayan Pratap Singh. Pandit Sri Krishna Dutt Paliwal. Babu Parsidh Narayan Anad. Pandit Yajna Narayan Upadhyay. Rai Sahib Babu Dip Narayan Roy. Rai Bahadur Thakur Hanuman Singh. 2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur. Bhaya Hanumat Prasad Singh. Pandit Baijnath Misra. Pandit Govind Ballabh Pant. Babu Ram Chandra Sinha. Rai Bahadur Thakur Mashul Singh. Babu Sita Ram. Khan Bahadur Mr. Muhammad Aslam Saifi. Maulvi Zabur-ud-din Rao Sahib Abdul Hameed Khan. Nawabzada Muhammad N'jaz Ali Khan. Khan Bahadur Obaidhri Amir Hasan Khan. Mr. Muhammad Ismail Ali Khan. Maulvi Muhammad Obaid-ur-Rahman Khan. Khan Bahadur Hafez Hidayat Husain. Khan Bahadur Shaikh Masud-uz-Zaman. Khan Bahadur Mr. Muhammad Ismail. Khan Bahadur Saiyid Muhammad Ashiq Husain. Khan Bahadur Maulvi Fasih-ud-din. Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan. Khan Bahadur Hakim Mahbub Ali Khan. Khan Bahadur Mr. Ashiq Husain Mirza. Khan Bahadur Munshi Siddiq Ahmad. Qazi Habib Ashraf. Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf. Rai Bahadur Lala Behari Lal. Rai Bahadur Lala Mathura Prasad Mehrotra. Raja Jagannath Baksh Singh. Mr. F. M. Souter. Mr. Tracey Gavin Jones. Rai Bahadur Babu Vikramajit Singh. Dr. Ganesh Prasad.</p>
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THE AGRA TENANCY BILL.

Hon'ble the President: The question is that the amendments recommended by His Excellency the Governor be taken into consideration.

Hon'ble Sir Sam O'Donnell: I do not think, Sir, there is any question whether the recommendations of His Excellency the Governor should or should not be taken into consideration. They have to be considered by the Council.

Hon'ble the President: If the Hon'ble the Finance Member will see rule 20C(4), he will find that the Council may refuse to take the recommended Bill into consideration, and if it be so refused, the effect will be that no amendments can be moved.

Hon'ble Sir Sam O'Donnell: I think, Sir, that relates to an earlier stage.

Hon'ble the President: The difficulty is that there is no precedent on the subject, but as I read the rules I think that there is no alternative but this. The effect is the same whether the Council discusses the amendments or refuses to take them into consideration, and if the Council agrees to take the recommendations into consideration, the amendments can be discussed.

Hon'ble Sir Sam O'Donnell: My point is that the member in charge of the Bill will have to move amendments.

Hon'ble the President: That is absolutely right. If any amendments are to be moved, the member in charge of the Bill will move them. That is right. But the Council has to agree first to consider the recommendations. If the Hon'ble the Finance Member will see rule 20C(5), he will find that it runs as follows:—

"Subject to the provisions of this rule and of rule 20B, the ordinary procedure of the Council in regard to Bills shall, so far as may be, apply in regard to recommended Bills."

I do not agree with the Hon'ble the Finance Member that the Council cannot refuse to take into consideration the recommended Bill.

Khan Bahadur Hafiz Hidayat Husain: I rise to raise a point of some constitutional importance and one that relates to the privileges and dignity of this House. The House was adjourned yesterday with the consent of the Hon'ble the Member for Government in charge of the Bill to consider the recommendations of His Excellency the Governor.

Hon'ble the President: If it is a point of order, the honourable member had better state his point of order briefly before making his speech.

Khan Bahadur Hafiz Hidayat Husain: The point of order that I wish to raise is, whether His Excellency the Governor can recommend, under section 72E of the Government of India Act and rule 20C(1), for reconsideration any provisions of a Bill during the progress of that Bill when it is not a recommended Bill. That is the point that I want to raise. I have just submitted that this House was adjourned yesterday on a motion moved by my honourable friend Khan Bahadur Mr. Muhammad Ismail and with the consent of the Hon'ble the Finance Member to consider the recommendations of His Excellency the Governor that were read to this House by yourself. I can assure the

House that when the time comes for consideration of those recommendations, they will receive our most respectful and anxious consideration, but the point is whether that stage has been reached when these recommendations can be made and can be considered.

If that stage has not been reached, as I would submit to you is the case, these recommendations cannot be made and cannot be considered. His Excellency the Governor has been pleased in his message to say that "with reference to section 72E of the Government of India Act and to rule 20 C (1) of the United Provinces Legislative Council Rules, I recommend that the amendments above specified be made in the Bill as already shaped by Council and that the Bill as so amended be passed." Rule 20C (1) says:—

"A recommendation or certification in respect of any Bill by the Governor under section 72E of the Government of India Act may be made by message and shall be communicated to the Council by the President and shall be endorsed on the Bill."

That has been done; I have got no dispute about that. Then, Sir, I come to section 72E of the Government of India Act. It says:—

"Where a Governor's Legislative Council has refused leave to introduce, or has failed to pass in a form recommended by the Governor, any Bill relating to a reserved subject, the Governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject" and so on and so forth.

Now this rule is divisible into two heads. The first when a Governor's Legislative Council has refused leave to introduce. Which is not the case here. The second head is when the Governor's Legislative Council has failed to pass a Bill in the form recommended by the Governor. My submission is that before section 72E comes into play the Bill must be one which may have been recommended by His Excellency the Governor, which means that it must be a recommended Bill which the Council has refused to pass. We have got one instance of a recommended Bill which has just been passed by the Bengal Council and that is the Goonda Bill. That Bill was a Bill that was recommended by His Excellency the Governor of Bengal for adoption by the Bengal Legislative Council. Therefore my point is that under section 72E of the Government of India Act no recommendation could be made when the Bill was yet under consideration by the Council if that Bill was not a recommended Bill. The other view will land us in absurdities; it will amount to this, that at any stage of the consideration of a Bill which was not a recommended Bill, but may be a private Bill, recommendation could be made by His Excellency the Governor to the Council to review its decision over any clause or to pass any section of the Bill in a particular way. I do not think that this could have been contemplated by the Legislature when the Government of India Act was passed.

We have further section 81A of the Government of India Act which is relevant to this point. Section 81A says:—

"Where a Bill has been passed by a local Legislative Council, the Governor, Lieutenant-Governor or Chief Commissioner may, instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the Council for reconsideration."

[Khan Bahadur Hafiz Hidayat Husain.]

This section refers to a stage when a Bill has been passed by the local Legislative Council and when the Bill has been certified under standing order 59 by the Hon'ble the President and sent to the Governor for his intimation and securing his assent. Therefore, looking to the provisions of these two sections, it seems to me that section 81 controls the provisions of section 72E of the Government of India Act and that this recommendation could not be legally made by His Excellency the Governor at the stage at which it has been made and therefore this House is not competent to enter into those recommendations at this stage. That stage could come only in this particular case when the Bill has been passed by the Council and action under section 81 has been taken.

Now, Sir, I might draw your attention to section 72D(5). This is another section relevant to this case. Section 72D, para. (5), refers to a Bill that affects the safety or tranquillity of the province. It runs thus :—

“(5) Where any Bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, the Governor may certify that the Bill or any clause of it or the amendment affects the safety or tranquillity of his province or any part of it or of another province, and may direct that no proceedings or no further proceedings shall be taken by the Council in relation to the Bill, clause or amendment, and effect shall be given to any such direction.”

That, too, therefore does not help the Government. The Government might however take shelter behind rule 20C(3).

Hon'ble the President: I am afraid the honourable member is going beyond stating the point of order. He is delivering a speech.

Khan Bahadur Hafiz Hidayat Husain: I have exhausted the point and I am just briefly stating the conclusions. Rule 20C, clause (3), says :—

“(3) Where during the passage of a Bill the Governor makes a recommendation in respect thereof, and any clause of the Bill has been agreed to, or any amendment has been made, in a form inconsistent with the form recommended, the member in charge of the Bill may move any amendment which, if accepted, would bring the Bill into the form recommended.”

That is to say, the recommendation contemplated by this rule, to be consistent with the Act, must precede the consideration by the Council of any clause or clauses of the Bill. If this recommendation does not so precede, then clause (3) does not come into play; any other meaning would be in conflict with the clauses of the Government of India Act, sections 72E and 81A, which I have just read. This being the law on the point and this being the rule, my submission is that the Council is precluded from considering the recommendations of His Excellency the Governor that were communicated to us yesterday at this stage. Those recommendations should come and can be considered only when the Bill has been passed by the Council and certified to His Excellency the Governor by the Hon'ble the President. This Bill not being a recommended Bill, i.e. a Bill recommended by His Excellency the Governor for adoption by the Council, His Excellency cannot at this stage when the Bill

is passing through the second reading make his recommendations, and this Council is therefore precluded from considering those recommendations.

Hon'ble Sir Sam O'Donnell : I submit that the position is perfectly clear. Rule 20C (3) says :—

“ Where during the passage of a Bill the Governor makes a recommendation in respect thereof.”

It is thus clear that a recommendation can be made during the passage of the Bill. Passage of the Bill includes any time up to the actual passing of the Bill. At any stage a recommendation can be made. Section 72E, too, is perfectly clear :—“ has failed to pass in a form recommended by the Governor, any Bill relating to a reserved subject.”

Moreover the same wording occurs in section 67B :—“ Where either chamber of the Indian Legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor General, etc.” A recommendation was, I believe, in one case made after the Bill had been actually before the Assembly. Anyhow, apart from that, the position is perfectly clear that under this rule the Governor can make a recommendation at any stage. The rule says :—

“ Where during the passage of a Bill the Governor makes a recommendation in respect thereof, and any clause of the Bill has been agreed to, or any amendment has been made.”

That shows that a recommendation can be made after the clauses have been discussed. It is therefore quite wrong to say that the recommendation should be made before the Council has begun to discuss the Bill itself.

Hon'ble the President : It is no doubt an interesting question which Khan Bahadur Hafiz Hidayat Husain has raised and as I listened to him I thought that the Legislative Council, for the time being, has been converted into a Court of Law and I was to perform the function of a High Court Judge. The point of order is in effect that it was not open to His Excellency the Governor having regard to sections 72E and 81A of the Government of India Act to send this message to the Council at this stage of the passage of the Bill. And that even if rule 20C does permit His Excellency to send a message, it is inconsistent with section 72E and section 81A of the Government of India Act. Therefore, the message being invalid, the Council cannot consider the recommendations made or consider the amendments embodied therein. I must say that this is one of those instances where the Chair stands in need of an independent constitutional adviser, who will advise him in such intricate points of law. But I do feel that it is improper for the Chair to dabble in a question which is one for constitutional lawyers and politicians. If rule 20C is inconsistent with section 72E or 81A of the Government of India Act, other forums are open to honourable members here or to the public outside to test the validity of the law when passed. For me here to pronounce an opinion on this point is not proper. I am here simply to interpret the rules and standing orders according to my unaided judgement and according to my poor lights. It does seem to me, on the face of it, that the language of rule 20C seems by implication to give the power to His Excellency to send such a message during the passage of a Bill. The passage of a Bill, as pointed out by the Hon'ble the Finance

[Hon'ble the President.]

Member, means a Bill until it has been passed. Whatever may be the meaning of sections 72E and 81A, the language of sub-rule (3) is clear. On the face of it I think I cannot but say that as far as the Chair goes, the President cannot say that it was anything but within the power of His Excellency to send this message at this stage.

Khan Bahadur Hafiz Hidayat Hussain : I want to raise another point of order. That point of order is this. Can the standing orders be suspended to consider the recommendations of His Excellency? This Council was adjourned for a day only in order to consider the recommendations of His Excellency. Could those amendments be taken in less than 48 hours? You, Sir, gave a ruling yesterday on the motion of my friend on my left that the House could be adjourned for a day with the consent of the member in charge of the Bill. This means that as soon as the recommendations of His Excellency are communicated to the Council, the Council must forthwith proceed to consider them. Even a motion for 48 hours' adjournment will be a dilatory motion. Dilatory motion is defined in rule 20(3), as a motion which is calculated to delay the passage of a Bill. For the purposes of rule 20, a dilatory motion means a motion that a Bill be referred to a select committee or be circulated for eliciting information thereon, or any other motion the effect of the carrying of which will be to delay the passage of a Bill. Here the point is this. Could a 48 hours' adjournment be considered to have the effect of delaying the passage of a Bill, that is to say, could the rule for giving 48 hours' notice to move an amendment of any of His Excellency's recommendations be considered to be abrogated as soon as a message by His Excellency is received. I hope, Sir, in the light of what I have submitted, you may be able to amplify the ruling that you gave yesterday.

Hon'ble the President : Does the honourable member insinuate that yesterday's decision was inconsistent with the standing orders?

Khan Bahadur Hafiz Hidayat Hussain : No, certainly not.

Hon'ble the President : The honourable member seeks from me the interpretation of the words "dilatory motion." Now, the words mean what they mean. They have been defined in sub-rule (3) of rule 203 which he has read out himself. It includes a motion the effect of the carrying of which will be to delay the passage of a Bill. The word "delay" can cover one day's delay, or one month's delay, or one year's delay. It is all a matter of duration of time, whether it be one year, one month, one week or one day. But there is no doubt about it that so far as the motion is calculated to delay the passage of a Bill it comes within the words "dilatory motion." Now, whether a dilatory motion could be moved with or without the consent of the member in charge is provided for, as I read out yesterday to the House, by sub-rule (2) of rule 20C. It says that no dilatory motion shall be made in connexion with a Bill in respect of which a recommendation has been made without the consent of the member in charge of the Bill. This is clearly a Bill in respect of which a recommendation has been made. There is no doubt that a dilatory motion could only be moved with the consent of the member in charge. Now, this is an extraordinary procedure, used in emergent circumstances. I take it that the principle of this rule is not to help those who want to delay or obstruct the passage through the

Council of certain legislation which Government in their wisdom wish to hasten through the Council in a particular form. The rule provides that if there is to be a dilatory motion it must be with the consent of the member in charge of the Bill. Now, if the member in charge of the Bill is not reasonable, or is obstinate, and does not agree to giving reasonable period of time for members to consider the amendments or to consider the proposals thoroughly, resourceful members, powerfully backed, will find a hundred and one ways of showing their resentment, if there is any resentment, against that attitude of the member in charge. That however is a matter between the members themselves and the member in charge of the Bill. As far as the Chair goes, it cannot but hold that a dilatory motion is a motion as defined in sub-rule (3) of rule 20C. As far as the suspension of standing orders is concerned, after all standing orders are only subject to rules, and those rules, as I said, have been framed to meet some emergent cases, so those standing orders necessarily and naturally stand suspended.

Rai Sahib Lala Jagdish Prasad: May I know if the members of this House are entitled to move any amendments to the amendments that have been recommended by His Excellency the Governor?

Hon'ble the President: Certainly. And as far the Chair is concerned, those amendments can be made on the spur of the moment without any previous notice.

Question, that the recommendations of His Excellency the Governor embodied in the message read out to the Council yesterday be taken into consideration, put and agreed to.

Hon'ble the President: We will now take the recommendations serialim.

RECOMMENDATIONS OF HIS EXCELLENCY THE GOVERNOR.

CLAUSE 4 (e).

Hon'ble Sir Sam O'Donnell: I propose, Sir, to take the amendments in the order in which they are given in the message of His Excellency, which is the logical order.

I beg to move, Sir, the following amendment to the first proviso to clause 4 (e) :—

“ Provided, first, that the area of *sir* which may be acquired by a landlord or permanent tenure-holder under sub-clause (e) when added to the area which is already the *sir* of the landlord or permanent tenure-holder under sub-clauses (a), (b), (c), and (d) shall not exceed in the aggregate the following scale :—”

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan: I rise with some diffidence to oppose the motion that has just been moved by the Hon'ble Finance Member because I know it is difficult to convince Government benches with argument. I realize that my task is very difficult, for I have to criticize the arguments advanced by the highest officer of this province for whom I have the greatest respect. I realize, Sir, that my duty on the present occasion is very painful indeed, but my sense of duty forces me to discharge it honestly. The amendment which the present motion seeks to nullify was made by this House after mature consideration and great deliberation. Our action, Sir, was not a hasty one. We gave our most serious thought to this matter before we passed the amendment. The zamindar members

[Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.]
of the Select Committee fought for this right. There they were unsuccessful, and is evidenced by the note of dissent appended by them to the majority report.

Pandit Nanak Chand : May I rise to a point of order? Is the honourable member in order in referring to the proceedings of the Select Committee?

Hon'ble the President : Is the honourable member referring to the proceedings of the Select Committee? I hope the honourable member will not do it.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : I am not referring to the proceedings of the Select Committee. I am only referring to the note of dissent and to the report of the majority that were published in the Government Gazette. I think they are not privileged documents.

In the Council, Sir, a motion was moved on the subject and that motion was passed by the House. It pains me to find that Government has thought it fit to return this clause of the Bill for the reconsideration of the House.

Now, Sir, I will come to the reasons advanced in favour of this recommendation. The chief apprehension of the Government appears to be, as is stated in the message, that some zamindars would take undue advantage of this liberal scale and will convert every acre of their land into *sir* land: I will read a few lines from the message. I refer to paragraph 13. "The amendment actually opens a door by which in some cases a landlord could convert every acre of his land into *sir* and thereby prevent the accrual of tenant rights in any of it. It clearly strikes at the basic principle which the Council have accepted." If honourable members will closely study the wording of sub-clause (e) and the scale appended to it they will realize at once that it will not be possible for landlords to convert every acre of their land into *sir*.

The scale is there. They have to remain within that scale. They cannot go beyond it. Suppose, Sir, I possess 200 acres of land. I can convert 15 acres, plus 15 per cent. That comes to about 40 acres in all. Out of 200 acres I can convert only 40 acres into my *sir*. The fear of Government on this point is therefore without foundation. The argument advanced by Government, I am confident, will not find favour with this House. Many reasons were advanced by my esteemed friend the Hon'ble the Finance Member when this clause came up before the House for discussion. Those arguments were duly examined by this honourable House. They failed to convince us and the result of that was that this sub-clause was passed.

Now, I will briefly state the reasons and considerations which justify the action this Council took. I shall be very brief in my remarks. My first reason, Sir, in support of sub-clause (e) as passed by the Council is that the policy of all tenancy laws has been to encourage cultivation by proprietors. If you refer to the law of private proprietorship you will agree with me in saying that the needs of a proprietor deserve greater consideration than the needs of those who occupy the land for the time

being. The policy which has hitherto been followed in these provinces and which has hitherto been looked upon as beneficial and sound should not be abandoned now. There are no reasons for its abandonment. I admit that the existing Agra Tenancy Act does not confer this power on landlords. But, Sir, the Government, the swarajists, and the zamindars are all unanimous in saying that the Act is defective. Now, Sir, if this sub-clause is allowed to stand as it is, zamindars will be encouraged to resort to self-cultivation, because they will have some aim, some definite object before them which they can achieve by cultivating their own land. The object is that their land will be converted into their *sir*.

My second reason in support of this sub-clause is that landlords are men of better resources. If they are encouraged to cultivate their own land they will certainly spend much capital over it and they will introduce improved methods of cultivation. The result will be that the tenants will get an opportunity of realizing the advantages of improved methods and in the long run they will also apply them. In this way agriculture will be developed in this country.

My third reason is this. The economic conditions which are prevailing in our provinces these days convince every thinking man that ere long landlords will have to fall back on agriculture as the chief source of subsistence, and for this purpose land will be required. I am not at one with those who think that clause 40 is very effective and that it will meet the requirements of each and every landlord. I am firmly of opinion that clause 40 is quite ineffective, and will be a dead-letter for all practical purposes. My submission is that land will be required for cultivation by the proprietors. If clause (e) is retained, I am of opinion that landlords will have sufficient land for their own use, and the tenants will not be harmed in any way.

My fourth point is that, while a tenant of one year's standing is allowed statutory rights and all occupancy tenants are allowed to sublet their holdings for a period of five years, it is quite unjust to refuse a landlord the power of acquiring *sir* rights in a land which has been cultivated by him for a long period of ten years. We should not forget that the land is his own and that if he cultivates it for as long a period as ten years, it is only fair that he should have *sir* rights in it.

My fifth point is that, if landlords will have enough land at their disposal, it will be possible for them at times to help tenants. Let me illustrate what I mean. Suppose a tenant is obliged to leave a certain village because the climate of that village is bad and does not suit him. Now, land will not be available for him in any other village because the tenants will either be occupancy or statutory throughout the province. It will not be possible for zamindars to give any land to such a tenant. The result will be that tenants will be tied down to the villages in which they reside at present. If the climate of Naini Tal does not suit me, I can go to Mussoorie or to any other place and settle there, but a tenant, whether the climate of a particular village suits him or not, will have to reside there. This difficulty, I submit, can easily be surmounted if clause (e) is retained in its present form.

For these reasons I oppose the motion of the Hon'ble the Finance Member with all the emphasis at my command.

Pandit Nanak Chand : I recognize that the zamindars have got a prior claim over that of a tenant for land for their own cultivation, and it was with that very object in view that when my friend, the honourable

[Pandit N. nak Chand.]

member for Allahabad, proposed the deletion of clause 4(d), I opposed his motion, which however he ultimately withdrew on the advice of my esteemed friend, Pandit Govind Ballabh Pant. The right of *sir* is a special right and has been allowed to be enjoyed by the zamindars only to a limited extent, but this Bill has proposed in sub-clause 4(d), that land which at the commencement of this Act was being cultivated by the proprietor or permanent tenure-holder himself with his own stock, or by his servants, or by hired labour, and which was recorded as the *khudkasht* of the proprietor or permanent tenure-holder in the agricultural year immediately preceding the agricultural year in which this Act comes into force will become *sir*. This means that by this provision the area of *sir* will be extended to the extent of the lands which were taken by the zamindars in their own *khudkasht* before, at the time when, and after this Bill was published. It is a well-known fact that there have been ejectments for arrears of rent and some occupancy and non-occupancy holdings have reverted to zamindars for want of heirs, which on account of this Bill have been taken by the landlords in their own cultivation and all such lands will be entered as *sir*. In most cases this extension of *sir* area will meet the genuine requirements of those landlords who want to cultivate their own lands. *Sir*, it has been said that it will not be possible for zamindars to acquire *sir* rights under clause 4(e). As has been suggested in the message of His Excellency the Governor, this proviso, which was passed by the Council, restricted the application of the scale to 4(e) alone, and it excluded all *sir* area from the scale which comes under sub-clauses (a), (b), (c) and (d). I will take an instance to point out that it is conceivable that a landlord who owns, say, 200 acres of land and who had 60 acres of *sir* land under sub-clauses (a), (b) and (c), and he converts some more land over and above these 60 acres which came under his control recently into *khudkasht*. If we suppose that he so convert, another 60 acres of his land under sub-clause (d) he would have 120 acres out of 200 acres under clauses (a), (b), (c), and (d), put together. He can sub-let that *sir* area to sub-tenants who cannot acquire any rights in *sir* land and then he can take up any area that he can get under 4(e) and cultivate it for ten years to turn it into *sir*. He can go up to the limit which is allowed to him by this provision under 4(e), and the honourable members can work out what a small area will be left in which statutory rights will be allowed to accrue and continue if the zamindar does not take that land into his *khudkasht*. It has been pointed out by my friend the last speaker that if there was some reserve area at the disposal of the landlords it will enable him to help those tenants who migrate from one village to another. There might be some very rare cases of that nature; I feel certain that such cases are not many, at the same time I feel that the land that will be at the disposal of the zamindars for want of heirs, non-payment of arrears of rent, will be enough to meet such contingencies if the zamindar so choose to help such tenants. I think that the recommendation of His Excellency the Governor, as contained in the amendment proposed by the Hon'ble the Finance Member, is one which should be accepted by the House and I particularly appeal to my zamindar friends to reconsider their attitude in this matter. They ought to exercise a greater sense of responsibility, and they ought to be as fair to the tenants who form the majority of their constituents as they want to be to themselves.

They should not betray the trust reposed in them by the simple, illiterate and ignorant tenants, whose interests they are morally bound to safeguard, if not more, at least as much as their own. With this request I trust that my zamindar friends will not adopt an attitude similar to that which they adopted in this connexion in the earlier stages of the Bill.

Khan Bahadur Maulvi Fasih ud-din: In spite of the fact that I happen to be rather in a state of convalescence I cannot help the temptation of having my say on this important matter. In my humble opinion the position that has been taken up by the Government is wrong, and not only quite wrong, but unfair, unjust, and untenable. The most surprising point about the whole case is that a man who has absolutely nothing to do with the land, and who just happens to make a furrow in the land for one day, or for one hour or even for a minute, is allowed to hold the land for the whole of his life, while a man who has invested his capital—his hard-earned capital—in the land, and who has a stake in the land, cannot acquire *sir* in that land even though he cultivates that land for a long period of ten years. This is injustice with a vengeance. I think that the Government could not assume a more untenable and a more assailable position than it has done now. We all passed this clause with a majority and now we are being told that we should go back upon this clause, and that the zamindar should not have any right to claim any land as *sir*, even within a limited scale, even when he cultivates that land continuously and without sub-letting that land to anybody for full ten years. This is a matter which commands the most serious consideration of those who can lay any claim to being just or conscientious and I think it is up to this House to oppose the suggestion put by the Hon'ble the Finance Member.

Hon'ble Sir Sam O'Donnell: I do not think I need take up the time of the Council with any lengthy reply to the arguments that have been advanced. I cannot think that the honourable members who have spoken in opposition to this amendment have made any serious attempt to meet the arguments advanced by His Excellency the Governor. It is common ground that, now that we propose to confer statutory rights on the tenants, the landlords should have reasonable facilities for acquiring land for their own cultivation. Such facilities were amply provided in the Bill as introduced. There is no reason to believe that the smaller landlords who depend on cultivation for their living, have not already an ample area of *sir* and *khudkash*. The total area of *sir* and *khudkash* in the province is close on six million acres; but under clause 4 we are providing that the *khudkash* area shall be converted into *sir*. That means an addition of over two million acres to *sir*. By converting it into *sir*, that area is guaranteed as always available for the cultivation of the landlord. The objection to the alteration of the clause which was made by the Council is simply that it would give landlords *sir* that they do not require for their own cultivation. There is no limit to the amount of land which may be *sir* under the first four clauses. A landlord may have 60, 70, 80 or even 90 per cent. of his total holding as *sir* and yet under the alteration made by the Council, he would be entitled to go on acquiring additional *sir* up to the scale. The result might be that in some cases the total area would become *sir*. But in any case the result would in many cases be that the landlord would be acquiring land in excess of what he really needed for his own cultivation and if land in excess of what he really required for his own cultivation

[Hon'ble Sir Sam O'Donnell.]

did become sir, then we know that it would be sub-let. There is no other purpose for which it can be utilized; and it would be sub-let to tenants who would have no rights of any kind and no protection either against ejectment or excessive enhancements. That, of course, is opposed to the whole policy of the Bill.

Question put, that the amendment moved today to the first proviso to clause 4(e) in the form recommended by His Excellency the Governor, be made.

The House divided : Ayes, 36 ; Noes, 33.

Ayes.

Hon'ble Sir Sam O'Donnell.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.

Mr. G. B. Lambert.

Mr. E. A. H. Blunt.

Kunwar Jagdish Prasad.

Sir Ivo Elhott.

Mr. F. H. Tillard.

Mr. H. A. Lane.

Mr. R. L. Yorke.

Mr. R. Burn.

Mr. A. W. Pim.

Mr. B. J. K. Hallows.

Mr. E. L. Norton.

Mr. H. G. Billson.

Mr. R. J. S. Dodd.

Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenroder.

Mr. H. O. Desanges.

Mr. H. David.

Babu Khem Chand.

Babu Narayan Prasad Arora.

Babu Sangam Lal.

Babu Mohan Lal Saksena.

Pandit Nauak Chand.

Babu Nemi Saran.

Pandit Jhanni Lal Pande.

Pandit Sri Krishna Dutt Paliwal.

Pandit Yajna Narayan Upadhyay.

Pandit Govind Ballabh Pant.

Babu Ram Chandra Sinha.

Babu Sita Ram.

Qazi Habib Ashraf.

Mr. E. M. Souter.

Mr. Tracey Gavin Jones.

Rai Bahadur Babu Vikramajit Singh.

Noes.

Rai Jagdish Prasad Sahib.

Chaudhri Jaswant Singh

Lala Babu Lal.

Thakur Rajkumar Singh.

Rai Bahadur Babu Ram Nath Bhargava.

Rai Amba Prasad Sahib.

Lala Dhakan Lal.

Rao Sahib Kunwar Sardar Singh.

Raja Narayan Pratap Singh.

Rai Sahib Babu Dip Narayan Roy.

Rai Bahadur Thakur Hanuman Singh.

2nd Lieut. Sahibzada Ravi Pratap Narayan

Singh, Rai Bahadur.

Rai Bahadur Thakur Maashal Singh.

Khan Bahadur Mr. Muhammad Aslam Saifi.

Maulvi Zahur-ud-din.

Rao Sahib Abdul Hameed Khan.

Nawabzada Muhammad E'jaz Ali Khan.

Khan Bahadur Chaudhri Amir Hasan Khan.

Mr Muhammad Ismail Ali Khan.

Maulvi Muhammad Obaid-ur-Rahman Khan.

Khan Bahadur Hafiz Hidayat Hussain.

Khan Bahadur Sheikh Masud-uz-Zaman.

Khan Bahadur Mr. Muhammad Ismail.

Khan Bahadur Saiyid Muhammad Ashiq Hussain.

Khan Bahadur Maulvi Fasih-ud-din.

Khan Bahadur Maulvi Muhammad Fasil-ur-Rahman Khan.

Khan Bahadur Hakim Mahbub Ali Khan.

Khan Bahadur Munshi Siddiq Ahmad.

Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.

Rai Bahadur Lala Behari Lal.

Rai Bahadur Lala Mathura Prasad Mehrotra.

Raja Jagannath Baksh Singh.

Dr. Ganesh Prasad.

CLAUSES 40 AND 41.

Hon'ble Sir Sam O'Donnell : I beg to move that for clauses 40 and 41 of the Bill as passed the following clauses be substituted :—

40. (1) A landlord may apply to the Collector to acquire for him land held by an ex-proprietary or occupancy tenant for the purpose of farming on improved lines; and the Collector shall, if he is satisfied that reasonable grounds exist, order the acquisition of the land applied for, or part thereof, and shall at the same time award the tenant the compensation to which he is entitled under sub-section (2) of this section,

and shall thereupon order the ejectment of the tenant from the land acquired.

(2) The Collector before passing an order of ejectment under sub-section (1) of this section shall award to the tenant land with similar advantages in the same village, or, with the consent of the tenant, in another village; but to such extent as such land is not available, the Collector shall award monetary compensation amounting to six times the annual rental value of the land acquired, calculated at the rates prescribed for statutory tenants in sub-section 3(b) or sub-section (4) of section 59. Such compensation shall be in addition to the amount of compensation, if any, due for improvements.

41. (1) A landlord or a permanent tenure-holder may apply to the Collector to acquire for him land held by a statutory tenant or the heir of a statutory tenant for any of the following purposes, namely:—

(a) to (l) of the Bill of the Select Committee.

(2) The Collector shall, if he is satisfied that reasonable grounds exist, order the acquisition of the land applied for or part thereof, and shall at the same time award to the tenant the compensation to which he is entitled under sub-section (3) of this section, and shall thereupon order the ejectment of the tenant from the land acquired:

Provided that acquisition shall not be ordered for the purposes specified in (c) or (d) of sub-section (1) of this section, when suitable land not included in any holding is available.

(3) The Collector, before passing an order of ejectment under sub-section (2) of this section, shall award to the tenant monetary compensation which shall not exceed four times the annual rental value of the land acquired, estimated at the rates prescribed for statutory tenants in sub-section (3) (b) or sub-section (4) of section 59. Such compensation shall be in addition to the amount of compensation, if any, due for improvements.

(42) (1) When a tenant has been ejected under section 40 or section 41, he shall be entitled—

(a) to a reduction of rent to be determined by the Collector proportionate to the rental value of the land acquired,

(b) to retain the remainder of the holding, if any, with the same right as before,

(c) to be reinstated in the land required in the circumstances and on the conditions specified in sub-sections (2) and (3) of this section.

(2) If the person for whom the land was acquired—

(a) does not within two years from the date of ejectment of the tenant use it for the purpose for which it was acquired, or

(b) within the said period of two years uses it for any other purpose, or

(c) in the case of land acquired for any of the purposes specified in (a), (b), (c), or (d) of sub-section (1) of section 41, lets the land to another person within six years of the date of the ejectment of the tenant,

the dispossessed tenant may apply to the Collector—

in case (a) of this sub-section, on the expiry of the period of two years,

[Hon'ble Sir Sam O'Donnell.]

in case (b) of this sub-section, as soon as the land is used for any other purpose,

in case (c) of this sub-section, as soon as the land is let to another person,

to reinstate him in the land from which he was dispossessed :

Provided that he has not been admitted by the person for whom the land was acquired to the occupation of other land under any written agreement, whereby he has waived his right under this sub-section.

(3) The Collector on receiving an application under sub-section (2) of this section shall, if the conditions specified in (a), (b), or (c) of sub-section (2) of this section are fulfilled, reinstate the dispossessed tenant in the land acquired with the same rights and at the same rate of rent as at the date of his dispossession, on condition that such tenant restores to the person for whom the land was acquired the land or money or both awarded to him by way of compensation :

Provided that, so far as such compensation was money, the tenant shall be entitled to deduct by way of compensation for dispossession such amount as the Collector may determine :

Provided, further, that the amount so deducted shall not exceed the annual rent payable on the land acquired for each year of the period of dispossession.

Khan Bahadur Mr. Muhammad Ismail : I rise to oppose the amendment proposed by the Hon'ble the Finance Member. I am aware of the futility of this opposition, and it is not necessary to discuss the question on its merits, because we have already spent a great deal of time discussing this question and have failed to convince the Hon'ble the Finance Member against his own convictions. But the point that I wish to urge—and it is a point of importance—is the grievance we have got against the Hon'ble the Finance Member in this matter. When the Bill was introduced I regret that the honourable mover did not take us into his confidence. He did not inform us at the time that his attitude with regard to this Bill will be that we will have to accept the clause *en bloc* and any variation that would be made to it will not be acceptable to him. If we had known this fact we would have been spared a great deal of time and trouble and we would have saved the public exchequer a great deal of money. It is a most extraordinary position that almost every clause that has been amended in favour of the zamindar is now to be set at naught by amendments. Apart from this fact, Sir, I consider that the Government is not justified.

Pandit Govind Ballabh Pant : I rise to a point of order, Sir. If you will refer to sub-clause (2) of clause 40 now proposed by His Excellency the Governor you will find that there is a reference in it to sub-section 3(b) or sub-section (4) of section 59. This sub-clause of section 59 has been omitted and does not find place in the Bill.

Hon'ble the President : If section 59 is not carried then a consequential amendment will be made, if necessary. The recommendations of His Excellency the Governor have to be accepted or rejected as they are, unless the Hon'ble the Finance Member chooses to move an amendment. If the honourable member chooses to move an amendment he can do so.

If the Council carries the amendment about the deletion of section 59, consequential amendments will have to be made. If the honourable member wishes to move a motion for the adjournment of the debate on these clauses till we have discussed clause 59, I will put it to the House.

Pandit Govind Ballabh Pant: I move that the debate on clauses 40, 41, and 42 be postponed till we have discussed clause 59.

Hon'ble the President: Is there any objection to it?

Hon'ble Sir Sam O'Donnell: I think we ought to take these clauses in the order they are given here.

Question put, that the discussion on clauses 40, 41, and 42 be postponed till clause 59 has been discussed.

The House divided: Ayes, 16; Noes, 58.

Ayes.

Babu Narayan Prasad Arora.
Babu Sangam Lal
Babu Mohan Lal Baksena.
Thakur Shiva Narayan Singh.
Babu Nemi Sarau.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.

Pandit Jhanni Lal Pande.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyaya.
Pandit Govind Ballabh Pant.
Babu Ram Chandra Sinha.
Babu Sita Ram
Maulvi Zahur-ud-din.
Qazi Habib Ashraf.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. O. Desanges.
Mr. H. David.
Babu Khem Chand.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.
Lala Babu Lal.
Thakur Rajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.

Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Raja Narayan Pratap Singh.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Rai Bahadur Thakur Mashal Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Nawabzada Muhammad E'jaz Ali Khan
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Hussain.
Khan Bahadur Sheikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq Hussain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Rai Bahadur Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Jagannath Bikhsh Singh.
Mr. E. M. Souter.
Mr. Tracey Gav n Jones.
Rai Bahadur Babu Vikramajit Singh.
Dr. Ganesh Prasad.

Hon'ble the President: The motion of adjournment is accordingly lost. The debate on clauses 40, 41, and 42 will now be resumed.

Khan Bahadur Mr. Muhammad Ismail: As I was saying, we were not aware of the attitude of the Government. At the time we did not understand that the reference to the Select Committee was merely

[Khan Bahadur Mr. Muhammad Ismail.]

a formality and the discussion of those clauses in this House was merely a farce. We have been told more than once that the zamindars ought to advance with the times. When we are living in the age of democracy we must abide by the popular will. I will take the liberty of asking the Government to endeavour to advance with the times and to submit to the joint wishes or at least to the wishes of the majority of this House representing as we do literally millions of population of this province. The Act of 1901 was thrust upon this province in spite of the protest of the zamindars. Government at that time thought that they had discovered a panacea for all evils under which the tenants were suffering and they thought that after that the tenants will flourish. But after the lapse of a few years the Bill was condemned. It was found to be unworkable. Today, Sir, we hear from Government benches that most of the clauses of that Act were pernicious. It should have never become the law. But, Sir, are we sure that ten years hence we will not find a successor of the Hon'ble the Finance Member standing up from the same benches and condemning the provisions of this Bill and acknowledging the mistake of his predecessor? But in the meantime, Sir, we would have seen so many zamindars ruined. If the majority of this House has committed a mistake, at least this error has been committed in all honesty and not with a sinister motive or mischievous design, and if that error is discovered after some time, there will be time enough to rectify that particular error, but nothing would rectify the error of the Government which they are committing, acting as they do against the opinion of the majority of this House. I would therefore ask the Hon'ble the Finance Member, although it is hoping against hope, to reconsider the position and to allow the Bill, as it has been passed, to be worked for some time, and if any defects are found, then the Government will have an opportunity to bring them before the House. They will then not be roaming in a realm of surmises but will have facts and figures to go upon and will be better able to convince the members of this House. As I said before, it is not worth while discussing the matter on its merits, because we can never convince the honourable member in charge of the Bill. But I may point out that no legislation can be perfect, and unless you leave something to the good-will of the persons for whom you legislate, the results will never be satisfactory. Some of the zamindars may be bad, but the majority of us are certainly not vicious and have not got criminal tendencies. Our tenants have got affection and respect for us and we have got regard for their welfare. I ask if the entire body of zamindars is wiped off from this province, will the condition of tenants be any better? I am certain that the daily subsistence will still remain one meal and they will continue to be clothed in rags as they are now. Look to the tenants of Government estates. Can anybody say before this House that they are happier and richer than our tenants? Look to the tenants of the estates under the Court of Wards. Are they any better than our tenants? Do they get any sympathy from those who are above them and who manage their affairs? Most certainly not. It is a mistake to suppose that the zamindar as a middleman, is a nuisance and that his power and influence should be whittled down and that he should be driven out. I say it is a wrong policy; it is a mistaken policy.

Hon'ble the President: Should not those remarks have been postponed to a later stage of the Bill?

Khan Bahadur Mr. Muhammad Ismail: No, Sir. They apply to all amendments and particularly to this clause. Fortunately this clause was the result of a unanimous voting of the House. Now, I will come to the main provisions of clause 40. The clause as we framed it was a distinct improvement over the clause as embodied in the Bill. In our clause we raised the compensation for the acquisition of a statutory tenant's holding from four times to five times. Surely that was an improvement. In the old clause and in the present clause as moved by the Finance Member there is no protection to petty tenants who cultivate less than four acres. We provided that no acquisition could be made out of such holdings. Now let us consider the consequences of the present clause and of the clause as we drafted. In the eastern districts—I am not aware of the exact average—the majority of tenants cultivate less than four acres. It is true that in the western districts the average is higher than four acres. Under our clause the cultivator will hold at least four acres. That is certainly an advantage over the clause that has been proposed by the Hon'ble the Finance Member. Then, again, there is another defect. Now the zamindar knows that in certain circumstances he is entitled to take land for his self-cultivation. On the other hand, if the present clause is accepted, everybody will be living in a state of uncertainty and litigation would increase. The zamindar will apply in the hope that he might get round the soft corner in the heart of the Collector and the tenant might contest in the hope that he might be able to impress on the Collector that he cannot afford to lose any portion of his land as he is poor and oppressed.

The result will be that cases will be fought out right up to the Board of Revenue, and after enormous amount of money having been spent, the decision will be either in favour of the one or the other. Therefore it is far better to know where you are than to live in a condition of suspense. This will encourage litigation and increase bitterness between the zamindars and tenants. Therefore on the merits I submit that the clause as drafted by us and as passed by the majority of the House is a distinct improvement on the clause that has been proposed by the Hon'ble the Finance Member, but our experience is that he is not prepared to accept any variation, any alteration, however trivial it may be. As I said, it is a futile protest, it is a futile objection, but I want to impress upon the mind of the Government that it is a mistaken policy to thwart the wishes of the House. It creates discouragement amongst us and surely no sensible man will ever care to waste his time in the Council any longer, knowing full well that his presence or absence makes no difference.

I will take a few seconds more and I have finished. I and many of my friends were of the opinion that the reformed Councils were real, that they were not a farce. We came here because we thought that our opinions would be respected and carry some weight, but we have discovered our blunder after six years of working.

A Swarajist member: "Come with us."

Khan Bahadur Mr. Muhammad Ismail: I admit that the sooner we realize it, the better. It is never too late to find out one's mistake. Probably my friends also have made some mistakes. I am afraid all of us have.

Rao Sahib Abdul Hameed Khan :

جناب والا —

آج خصوصیت کے ساتھ میز پر استدعا اور خواہش ہے کہ میمبران گورنمنٹ بالعموم اور جناب آئربیل فائٹنس میمبر صاحب بالخصوص میز پر تقریب کے ایک ایک لفظ کو پورے غور و خوض کے ساتھ سنیں۔ جناب والا آج جو بحث اس وقت ہو رہی ہے اُس پرانے قضیہ کے متعلق ہے کہ زمیندار کو خود کاشت کے لیے زمین حاصل کرنے کے لیے کلکٹر کی اجازت کی ضرورت ہے یا نہیں اس کے متعلق مجھے یہ عرض کرنا ہے کہ اس بل کا جو خاص مقصد ہے کہ کاشتکاران کی حالت کو آج سے بہتر کیا جائے جیسا کہ ابھی ہمارے زمیندار پارٹی کے لیڈر نے بھی کہا ہے۔ یقیناً ہم زمیندار کا یہ فرض ہے کہ وہ اپنے کاشتکاران کی بہتری کی ہر صورت کا خیر مقدم کرے اور اسی لیے ہم سب تمام ایسی تحریکوں کے خیر مقدم کے لیے تیار ہیں کہ جن کا مقصد بل زمیندار کو نقصان پہنچائے ہوئے کاشتکاران کی حالت کو بہتر کرنا ہو۔ لیکن اس کے ساتھ ہی میں یہ عرض کرنا چاہتا ہوں کہ خود ہماری حالت بھی کئی لحاظ سے نہایت بدتر ہے اور اس کو بھی بہتر کرنے کی ضرورت ہے۔ تاوقتیکہ خود ہماری حالت بہتر نہ ہو کاشتکاران کی حالت بہتر نہیں ہو سکتی۔ اس لیے ہمیں کہ زمینداروں کی نیک نیتی یا ان کی مخلصانہ ہمدردی کاشتکاران کی بہبودی کے لیے حاصل نہیں کی جاسکتی بلکہ اس لیے کہ — اسے اس کے خورگم است کر رہی تھیں — میں نے زمینداران کی حالت پر بحیثیت زمیندار کے خوب غور کیا ہے اور میں سمجھتا ہوں کہ زمیندار اپنے فرائض کے لیے خود تنہا ذمہ دار نہیں ہیں بلکہ درحقیقت جو چیز زمینداران کی حالت کو بہتر نہیں ہونے دیتی وہ سرکاری اثر اور دباؤ (Official pressure) اور Influence ہے — زمینداروں کی اس دلت تک ایک ایسی جماعت رہی ہے کہ اس میں ایسی افراد کی تعداد بہت زیادہ رہی ہے کہ انہوں نے ہمیشہ اپنے کو بجائے ہندوستانی یا ہندو یا مسلمان سمجھنے کے سرکاری آدمی سمجھا ہے اور یہ کبھی خیال نہیں کیا کہ ہم کس ملک میں پیدا ہوئے ہیں۔ ہماری کوئی برادری بھی ہے یا نہیں اور ہمارا کوئی خدا اور مذہب بھی ہے یا نہیں۔ انہوں نے ملک۔ برادری۔ خدا اور مذہب کا حق لڑنے اچھی طرح کبھی ادا نہیں کیا جتنا کہ چاہیے تھا لیکن اس کا انعام اور صلہ ان کو مل گیا جیسا کہ ایک ہندوستانی کہات ہے کہ خدا کے یہاں دیو ہی اندھے نہیں ہیں۔ ان کو آج معلوم ہو گیا کہ جن کے قدموں پر انہوں نے اپنا خون۔ مذہب اور ایمان نثار کیا انہوں نے اُس کی قدر نہیں کی۔ اس کے بعد میں یہ سمجھتا ہوں کہ اب بھی وقت ہے (It is never too late to mend) اصلاح جب بھی ہو جائے بہتر ہے۔ اب بھی وقت ہے کہ زمیندار آنکھیں کھولیں اور یہ دیکھیں اور یہ سمجھیں کہ زمینداروں کا پیچھا طرز بیکار اور غیر مفید محض ثابت ہوا ہے اگر اُس کو بحیثیت ایک جماعت کے زندہ رہنا ہے تو ان کا فرض ہے کہ آئندہ سے ان تمام ملکی تحریکوں میں حصہ لیں جن سے وہ ابھی تک بچتے رہے ہیں اور ان تمام فرائض کو جو ان پر بحیثیت ایک

(citizen) ہندوستانی کے عائد ہوتے ہیں پورے پورے ایثار اور پورے بے خوفیہ کے ساتھ ادا کریں *

اب جو سوال پیش ہی اُس کے متعلق یہہ عرض کرنا ہی کہ یہہ ایک بڑی اور قطعی رگارت زمیندار کے راستہ میں اُن کی اصلاح کے لیئے ہوگی اگر اِس دفعہ کو کسی طرح چھوڑ دیا گیا تو زمینداروں کی جان گورنمنٹ کے حکام (officers) کے قبضہ میں بالکل پہلے کی طرح رہیگی اور بہت سے ایسے کمزور زمیندار ہونگے جو اِس صورت میں اپنی پُرانی پالسی پر رہنا پسند کریں گے۔ اِس وقت میں گورنمنٹ سے کچھ عرض کرنا نہیں چاہتا میں سمجھتا ہوں کہ دفعہ ۴۰ (section 40) برطانوی سلطنت کو ہندوستان میں مضبوط طور پر قائم رکھنے کے لیئے ضروری ہی۔ اگر زمینداران پر کوئی اثر اور دباؤ حکام (officers) کا نہ رہیگا تو گمراہ لوگوں کے لیئے کاشتکاران کو جھگڑے اور فتنہ و فساد کی طرف متوجہ کر دینا مشکل کام نہ رہیگا۔ زمینداران پر اِس قسم کے قیود اِس لیئے رکھے جانی ہیں کہ وہ خود کو اور اپنے کاشتکاروں کو گورنمنٹ کا پورے طور پر وفا شعار رکھے ورنہ اُس کو پریشان کیا جاسکے۔ حقیقت میں سیکشن ۴۰ زمینداروں سے حفظ امن کا مجملہ ہی اور یہہ مدنظر ہی کہ زمیندار آئندہ بھی اپنے یہاں بے بہترین نوجوانوں کو اور اُن کے گڑھے پسینے کی کمائی کو سلطنت کے مصارف اور ضروریات کے لیئے جب موقع ہو لیکر حاضر ہوتا رہے۔ میں اپنے سوراجی بھائیوں سے اپیل کرتا ہوں کہ وہ اِس سیکشن ۴۰ کا صحیح مطلب سمجھیں۔ اِس کا مطلب یہہ نہیں ہی کہ اگر کلتھ کا لفظ نہ رہیگا تو عام بید خلیاں ہونگی اور اِس صوبے کے ایک ایک ایکٹ پر زمیندار کو سیر کا حق حاصل ہو جائیگا بلکہ یہہ سمجھیں کہ جب تک وہ زمینداروں کی امداد دے کے انہیں قومی اور ملکی تحریکوں میں حصہ لینے کے لیئے تیار اور آزاد نہ کر دینگے تب تک اُن کو کامیابی نہ ہوگی کیونکہ ایسی بھاری گاڑی ایک پہیئے کے پیکار ہونے پر آسانی سے نہیں چلائی جاسکتی۔ یہہ تو مجھے اپنے سوراجی بھائیوں سے عرض کرنا تھا۔ میں اپنے زمیندار بھائیوں سے بھی یہہ عرض کرنے کی جرأت کرتا ہوں کہ جب یہہ قانون نافذ ہو جائے اور اُس کے بعد جب وہ کونسل کے انتخاب (election) کے لیئے کھڑے ہوں اور کامیاب ہوکر تشریف لویں تو اپنی پچھلی پالسی کو خدا کے لیئے اپنا لالچہ عمل نہ بنائیں بلکہ سوچ سمجھے کر کام کریں اور گورنمنٹ کو یہہ بلائیں کہ ہم کافی خودداری اور احساس رکھتے ہیں اور ہم بٹوگر اور بیار کو اچھی طرح سے پہچانتے ہیں *

Khan Bahadur Maulvi Fazl-ur-Rahman Khan: I rise to make a few additions to what Mr. Ismail has said. It is expressly mentioned in the message of His Excellency the Governor that the action of Government in connexion with this Bill was not hasty; that a committee was appointed; that that committee considered the question with great deliberation and attention and then the draft was referred to a committee which published its report in 1924. I admit that the action taken by Government was not hasty. My chief objection is that Government did not stick to the drafts prepared by the committee. Now let

[Khan Bahadur Maulvi Fazl-ur-Rahman Khan.]

us examine the draft that was prepared by the 1924 Committee. In the message of His Excellency the Governor it is said that this Bill is based on the recommendations of that committee. It is expressly given in the message that "that committee reported in July, 1924. We framed a Bill in accordance with their recommendations and we secured the necessary sanction of higher authority." Now, Sir, if you refer to the draft prepared by the 1924 Committee, you will find that in the draft of section 40 the Collector was not allowed any discretion. Some important and experienced officers of Government were members of that committee. You yourself, Sir, were a member of that committee. That committee was unanimous in holding that the Collector should not be allowed any discretion. The Government says that the Bill is based entirely on the recommendations of that committee and, Sir, in face of this remark that discretion is being thrust on us, is being hurled at our faces. This is unfair. Further, if you compare the clause that has been passed by the Council with the clause now proposed, you will find that the latter is rife with defects. Our clause is clear and it is unambiguous. A tenant knows his position perfectly well and so does a landlord under our clause. We have raised the amount of compensation as we thought that five times of the rent was the proper compensation. We have also prescribed a minimum for tenants because we were of opinion that the tenants should not be left without any land. The clause now proposed is ambiguous. These two points of difference decidedly place our section at a higher level. Our section is certainly an improvement on the old clause, as well as on the clause now before the House. Now, Sir, coming to the attitude of the Government in connexion with this Bill I have to make one or two observations. The Bill was referred to the Select Committee, speeches were made in the Council when our leave was obtained and we were given to understand that it would be open to the Select Committee to make necessary changes. We were further assured that the during the passage of the Bill in the Council members will have a free hand. At least we believed so. Now, Sir, in the end we find that the same Bill which was referred to the Select Committee is to be passed. Our labours have come to nothing, the public money that was spent in paying the members of the Select Committee and the members of this Council their travelling allowance and halting allowance was spent quite uselessly. If the intention of the Government was to pass the Bill as originally drafted it should not have been referred to a Select Committee and should not have been laid before the Council. It should have been introduced as an ordinance. If the Local Government is not authorized to introduce an ordinance help might have been taken from the Government of India. Now, Sir, I entirely agree with Khan Bahadur Mr. Muhammad Ismail when he said that the Reforms are certainly a farce. The Government does whatever it wants to do. Our majority in the House is meaningless. In spite of the fact that we are in a majority we cannot do anything. Now, Sir, if you refer to the message you will find that all substantial alterations which were made by this House have been set at naught by the Government. In my opinion, Sir, only those amendments have not been sent back in which the Hon'ble the Finance Member acquiesced or which he opposed only half-heartedly. From this it clearly follows that it is the will of

the members of Government that is to predominate and we have got no voice and no *locus standi*. The Bill did not relate to any communal matter. There was no unrest in the province. Under these circumstances advantage should not have been taken of the prerogative, which is to be exercised very rarely and only to safeguard the interests of the minorities or to save the peace of the province from being broken. With these remarks I oppose the proposal of the Hon'ble the Finance Member.

Rai Bahadur Babu Vikramajit Singh : Unfortunately during the debate on the Agra Tenancy Bill I had not been in this House on account of certain domestic troubles, but so far as this question goes I have always had a very clear opinion. I have no hesitation in supporting the amendment of the Hon'ble the Finance Member. It is a very right and proper amendment which has been moved by the Government. The Government would not have been true to their salt if they would have allowed the Bill to be enacted with a clause like one passed by the Council. That would have been a slur on them and would have shown that they are favourable to the majority party in the House in spite of the fact that they must be convinced that a clause like that will be very hard on a very large body of tenants. Now, Sir, there is no doubt that the landlords have been very generous and they have made a very large concession in favour of the tenants in conceding the statutory tenancy. And I say that we are all very grateful for that concession. If they wanted to oppose the statutory tenancy it was their right to do so and they could have fought every inch on that point, because they would have said that they will be divested from certain vested rights. But having given the statutory tenancy I think it takes away all the grace to enact clauses 40 and 41 to leave a large majority of tenants at the sweet will of the landlord. I do not mean to say that there is a large majority of landlords who are generous and treat their tenants very well, but there may be some landlords who may like to take advantage of certain clauses of the Bill. And I submit it is never the duty of the legislature to allow things like that to be passed so that anybody may take advantage of certain clauses in the Bill. These clauses will no doubt leave the statutory tenants at the mercy of the landlords. Supposing there is a tenant who may fall out with the landlord for certain reasons of his own, in that case the landlord could very well put in an application and get him ejected merely on the ground that he would like to cultivate his land. Therefore the legislature which is always considered to be an independent and impartial body and not dominated by any particular section of the House, must introduce safeguards so that it should protect the weak as well as the strong alike. What would have been the position if, instead of the landlords being in the majority, the tenants had been in the majority and tenants would have in that case probably liked to introduce a Bill which would have taken away everything from the landlords? I do not think any Government would have allowed them to do so. Government is the protector equally of landlords and of tenants, and must keep the balance even. Therefore Government is perfectly right in thinking that clauses 40 and 41 are such as may be misused. His Excellency has discussed that point in his message very lucidly and has put forward arguments which have not been controverted. Of course a number of speeches have been made by members of the landlord party with much feeling behind

[Rai Bahadur Babu Vikramajit Singh.]

them and it has been said that they had been living in a fool's paradise. They had thought that, whatever measure they will pass, the Government, in view of the fact that they have always supported it and been its right hand and real strength, will not go against them, and will accept that measure which has been passed by the majority in the Council to the detriment of the tenants. I think that the Government would not have been doing its duty if it had allowed, under these circumstances, the enactment of clauses such as 40 and 41. The landlord members of the Council have realized this and have held out threats that they will now see that they do not lend the same support to Government and so on. I think, Sir, from the very beginning they ought to have realized that they should have belonged to a party such as mine, the independent party, which gives responsive co-operation to Government and acts only for the good of the public outside. It is no use saying, where a man's own interest is concerned, that if his interest is not protected by Government he will withdraw co-operation. They would be wiser even now to come and belong to our party and always support the right and just cause, whether it is for the landlord or the tenant. I am neither a pro-tenant nor pro-landlord, but I do feel that this section 40 was not rightly adopted by the Council. In the Oudh Rent Act even acquisition through the agency of Collectors was objected to and very strongly opposed by a body of Councillors who took great interest in the Oudh Rent legislation. But it is found now that although the original Bill went on the same lines as the Oudh Rent Act, even this was opposed by the landlord members of the Council and it was said that the discretion of the Collector should be eliminated. I submit, Sir, that there should always be a third party as an arbitrator when there is diversity of interest between two conflicting parties. Of course the tenant does not like that his tenancy should be taken away and if the landlord likes to take it for certain reasons, he ought to convince a third party that he is in the right, and he really wants it for *bona fide* purposes and not merely for the sake of either vengeance or harassment, and it will be surprising to me if it was to be said by the body of the landlords that they have lost faith in the Collectors of the districts and they are not expected to divide it rightly. There will not be a single landlord who does not see the Collector usually and has not the greatest respect for him. So it can be safely presumed that the Collector in a case like this will not take any but the just and the right view of the situation. And why should the tenant be placed at the mercy of a particular landlord. I think there is everything to be said in favour of the amendment moved by the Government and the position of the opponents of this amendment cannot be supported on any reasonable ground. Even in the speech of the leader of the landlord party there were no reasons, but he only appealed to sentiment and said that, inasmuch as the majority had passed a certain measure, that measure ought to be accepted. If that view were insisted on, where would be the necessity of having such powers of interference reserved in the Government of India Act? These have been kept mainly for this very reason that if a majority party passed a clause or Bill which is not considered to be just or equitable by Government, the Government should intervene, and therefore I think, Sir, that it was the proper time for Government to intervene so that the Council may not

waste any more time, labour or money in passing a Bill which will not be acceptable to Government and to save the laborious process of its being sent back for reconsideration. I think the stage at which this has been moved seems to me proper and therefore I have no hesitation in supporting the amendment of the Hon'ble the Finance Member.

Rai Bahadur Thakur Mashal Singh: The honourable speaker who has just finished his speech has said that if the Government does not like a measure then it must send it back to the Council for reconsideration. I do not see eye to eye with Rai Bahadur Babu Vikramajit Singh in this view and I will put a question to him, whether the procedure which has been adopted this time is correct, or the procedure which the Government adopted on past occasions was correct. When the Oudh Rent Amendment Bill was passed, the question on which the Government differed was referred to the Council after the Bill had been passed. Similarly, when the Chief Court Bill was passed by the Council the question was referred to the Council after the Bill had been passed, not when the Bill was under discussion. So I think the Government and the Governor have made a mistake in sending it back. . .

Hon'ble the President: I hope the honourable member will not refer to the Governor. He should discuss the amendment on its merits.

Rai Bahadur Thakur Mashal Singh: Very well. Government ought not to have sent back the amendments adopted by the Council when the Bill was under discussion. Section 72E of the Government of India Act, which was referred to by some gentlemen in this House in the very beginning and under which the amendments have been returned does not apply. As to the attitude of Rai Bahadur Babu Vikramajit Singh, I would say that, just as he does not belong to either the zamindar party or the swarajist party, so I, too, do not belong to either of these parties. I belong to the same party to which he belongs, and I can say that the prestige and the dignity of the Council is nothing if, after mature consideration and full discussion on the floor of the House, the Council comes to certain conclusions but is over-ruled by Government. It is a constitutional defect and it should never be allowed in this Council. We must give our votes according to our conscience; we must discuss every point here; we may differ or agree, but whatever is once passed by a majority of votes must be respected; we must respect that decision. That is the fundamental principle of democracy, that what has once been passed by the majority of the House must be respected by those who are in a minority. They should not flout the opinion of the majority, and in this way they should not send back the decisions of the majority for reconsideration—decisions which, I should say, were passed by the unanimous vote of the non-official members. About this section 40 there was a difference of opinion between the Government and the swarajists and between the swarajists and the zamindars. The zamindars approached Government and desired that they should come to a common agreement, that they should come to a decision so that no party might feel it. Government did not think it proper to give a hearing to the zamindars. Then they approached their swarajist brethren, and they came to some understanding and according to that pact this section was passed. I

[Rai Bahadur Thakur Mashal Singh.]

think they were reasonable and they considered the interest both of zamindars and tenants. The swarajists cannot be said to be pro-zamindars. They have stood for justice, and if they have ever gone to the extreme they have gone to the side of the tenants and not against the tenants. They considered every interest and they arrived at a compromise according to which this section was amended as it stands in the amended Bill. The amendment that has been sent by the Governor and is now under consideration has once been rejected by this House. I say that the zamindars will suffer most if this amendment is carried, because they will have to pay one-fourth or one-third price of the land before land can be acquired by them. It is those who possess zamindari that can understand the position. It is those who possess house property that can understand the position. Those who have not got any property cannot understand it. Suppose a man has four houses and they are let out to tenants on rent. After some time he begets four sons and when they come of age and are married they want separate houses for themselves to live in and suppose Government intervenes and says :—“ No, you cannot eject these tenants ; they must live in those houses always paying rent and you have no right to get these houses vacated.” Is this justice ? Is this fair-play ? Is it not hard and inequitable that the sons of the owner of the houses be deprived of shelter and forced to lead a nomad life while mere tenants be allowed to live in those houses. Similarly, if a zamindar has got fifty acres of land and has got four sons and if for some time he lets out 25 acres of land to a tenant and when his sons come of age he wants to give the land to them for cultivation he cannot get the tenant ejected from the land. His sons may go and ask a statutory tenant to give them land as *shikmi*, but they cannot cultivate their own land, the land of their father. Is this justice ? Is this independence ? It is neither justice nor independence. The poor zamindars are several lakhs in number in the province of Agra. They will be ruined if this provision is inserted in the Bill in the recommended form. The case is different with those landlords who own taluqas and big estates. When they have got thousands of acres in their possession they can afford to give land in exchange or monetary compensation to their tenants. But here I am speaking on behalf of the petty zamindars, those who have, say, about fifty bighas or even less of land. If such zamindars want to acquire land for their own cultivation the Collector says : “ I do not think that you should get the land.” Thus the zamindar will not be able to get his own land even after paying six times the value of the annual rental. Is this justice ? I think it is all unjust. This should never be allowed. There are six or seven lakhs of zamindars who are really tenants. The only difference is that they have their own lands and they do not go to other zamindars to get lands for cultivation. So it is not out of sympathy either with the zamindars or tenants that this amendment has been brought in. Certainly it is the oppression of the Government. The Government has been oppressing the tenant through the zamindars. I say if a zamindar does not enhance the rent, if he does not eject the tenant the Government intervenes and says :—“ Why don't you enhance the rent ; you have concealed the rent ; the rents are inadequate.” Therefore Government will assess the revenue, taking into consideration the assumed rental, not the correct or actual rent paid for the land. What is the zamindar to do ? He has to oppress

the tenant. So if you have any sympathy with the zamindar as well as the tenant, this amendment should be rejected.

Dr. Ganesh Prasad : I rise not to find fault with the Government or to say that they have acted unconstitutionally and against the letter of the Government of India Act, but to make an appeal to them. Sir, I know very well that this House, for which I have greatest respect, cannot put itself on the same footing as some other Houses of Legislature in the British Empire. I know very well, Sir, that the zamindar friends who form the majority party in this House cannot claim to have that weight which I suppose ought to have been due to their numbers. This is not the first time when I have given expression to this view. I may recall to the minds of my honourable friends the unpleasant speech which I delivered in connexion with the recommendations made by the Muddiman Committee report. I hold exactly the same view now. I am not a member of any party. I am an independent. I am not a member of even that party which is called the Independent party. I know, Sir, that certain subjects have been reserved with a special object. I know, Sir, that the Joint Parliamentary Committee laid down that it would not be very rare for the Government to intervene in the matter of reserved subjects. Therefore I do not stand here today to say that the Government has done anything unconstitutional. But supposing for a minute that the Government would stand aside in this matter. What would be the harm? Personally I think the harm would not be very great. Every Legislative Council, every House of Legislature in every country makes mistakes now and then. I need not allude to very old Houses of Legislature. I may allude to what has happened in South Africa. We know very well that that Parliament has been extremely unjust and has done things which no section of human beings would like to do. Although the power of veto is there in the Crown, still that power of veto has not been exercised.

I believe, Sir, that the position taken up by my friend on my left is the most disappointing one. For him to come forward and say that there should be a third party to intervene on every occasion on which the third party thinks that intervention is necessary, is, I think, most disappointing. When will the time come for us to set our own house in order? Assuming for a minute that on another occasion there is a certain difference between a majority party and a minority party, may I inquire if it will be essential for the Government to come forward and say:—"Very well, we side with the minority party, and so our will shall be obeyed?" Sir, no one on the Government benches can stand up and swear that this amendment of theirs will make the Bill as perfect as it can be. I am quite sure that after ten or twelve or even after five years numerous imperfections will be found in this Bill, and an amending Bill will have to be brought forward. What is the harm, therefore, if, to use a vulgar English idiom, the House may be allowed to stew in its own juice? If the Council has made a mistake today, I am sure that when it is convinced of it, it will take steps to rectify it. I am of opinion that even in reserved subjects the intervention of the Governor in the manner in which it has been made today, should be exercised extremely rarely. I do not for a moment mean to cast a reflection on His Excellency the Governor, for whom I have the greatest respect and in comparison to whom, or even to Sir Sam O'Donnell, I am only a tyro in the matter of a political administration. Indeed only

[Dr. Ganesh Prasad.]

since my advent into this House I have been a student of politics ; but I make bold to say that to countenance an attempt on the part of the Government to interfere with the Legislature is to reduce, as has been aptly said by Khan Bahadur Mr. Muhammad Ismail, the House into, if I may say so, a mere show.

Pandit Govind Ballabh Pant : I rise on this occasion with a sad heart. I do not consider it necessary to enter into the merits of the original proposal or that which is now before us. The Council must have gathered from the tenor of the speech which I delivered here when clause 40 was taken up that, but for certain considerations, we would not have been a party to the clause as passed by the House. Left to our own independent judgement, we may not have found it quite equitable ; but, as I stated then, it was in return for certain concessions that we accepted it, as we felt that it would enable the zamindars to retain their powers to a certain extent and at the same time it would impose a greater responsibility on them of a moral type than if they were required to resort to the Collector on every occasion on which they needed a bigha of land. Our attitude was also determined by the knowledge that certain other safeguards had been provided which might further secure the position of the tenants. As I said in the beginning, it was on account of certain special considerations that we joined with our other non-official friends in the House and recorded an almost unanimous vote. It is with a feeling of mortification that much against my will, against my wishes and against my hopes what we then expected has not after all been realized, our friends prefer the restoration of roster system to present clause 40. They have asked us to cancel the arrangement that was made between us then and in the circumstances we have agreed among ourselves to leave every party free to vote on every proposal on its merits, and that being the case, I have to state that on the merits I agree with the proposal that has emanated from His Excellency.

Hon'ble Sir Sam O'Donnell : Khan Bahadur Mr. Muhammad Ismail in the beginning of his speech said that they had a grievance against me. I listened with surprise to that statement. My attitude on this provision has been consistent from first to last. The select committee accepted clause 40 as in the Bill introduced with certain minor changes, and when the amendment, which was subsequently accepted by the Council was put forward, the Council will bear me out that I opposed it most vehemently. The same honourable member has said that something must be left to good-will. I agree with him that good-will is essential, and I trust it will be forthcoming. I agree with him too when he said that the majority of the landlords were neither vicious nor criminal. Those are not the terms which any one has any sort of right to apply to the landlords of these provinces. But a power to acquire property compulsorily vested in individuals is liable to misuse I do not see how that can be denied by any reasonable man. We have evidence in the working of an analogous provision in a neighbouring province that such a power would be abused by some landlords. I is for that reason that we were unable to accept the proposal of the 1924 committee. That committee had before it the reports of the Deputy Commissioners of Oudh, and I do not know why in the face of those

reports they recommended the omission of any reference to the discretion of the Collector. At any rate we, with these reports before us, came to the conclusion that it was essential to retain that discretion. It has been said that improvements were made by increasing the amount of compensation and by the provision that holdings should not be reduced below 4 acres. So far as they went, those changes were unobjectionable. But it is equally clear that a large proportion of the statutory tenants of these provinces would receive little or no protection from these provisions. In the western parts of the province the average holding is 8½ acres, and it would be a very serious hardship to the tenants of such holdings if their holdings were reduced to 4 acres. In our opinion no serious effort has been made to refute our argument. No automatic device can be adequate. It is by leaving the decision to a responsible officer who will base his decision in each case on a full examination of the facts that abuses can be prevented.

Sir, I regret that some heated remarks fell from some honourable members during the course of the debate. A legislature is no more infallible than an individual or any body of individuals. There is not a legislature in the world which has not from time to time recorded a mistaken decision. There is no legislature of any long standing in the world which has not again and again, explicitly or implicitly, recognized that it has committed errors. All that the Council is asked to do is to reconsider certain previous decisions in the light of the arguments which have been placed before it. I trust that it will do so without passion and without heat and in a spirit of calm reasonableness.

Question put, that the amendment proposed by the Hon'ble the Finance Member today regarding clauses 40 and 41 in the form recommended by His Excellency the Governor, be made.

The House divided: Ayes, 39; Noes, 37.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad
Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. M. Tilard.
Mr. H. A. Linc.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. J. Herchenroder.
Mr. H. C. Dessanges.

Mr. H. David.
Babu Khem Chand.
Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Saksoni.
Babu Bhagwati Sahai Bedar.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran
Chaudhri Badun Singh.
Pandit Bijaynandan Prasad Mishra.
Pandit Jhulan Lal Pande
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyaya.
Pandit Govind Ballabh Pant.
Babu Ram Chandra Sinha.
Babu Sita Ram.
Mr. E. M. Souter,
Mr. Tracey Gavin Jones.
Rai Bahadur Babu Vikramajit Singh.

Noes.

Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Lala Babu Lal.
Thakur Bajkumar Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Raja Suryspal Singh.
Lala Dhakan Lal.

Rao Sahib Kunwar Sardar Singh.
Thakur S. dho Singh.
Raja Narayan Pratap Singh.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Bavi Pratap Narayan
Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Rai Bahadur Thakur Mashal Singh.

Noes.

Khan Bahadur M. Muhammad Aslam Saifi	Khan Bahadur Maulvi Muhammad Fasil-ur-Rahman Khan.
Maulvi Zahir-ud-din.	Khan Bahadur Hakim Mahbub Ali Khan.
Rao Sahib Abdul Hameed Khan.	Khan Bahadur Mr. Ashiq Husain Mirza.
Nawabzada Muhammad E'jaz Ali Khan	Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Amir Hasan Khan.	Qazi Habib Ashraf.
Mr. Muhammad Ismail Ali Khan.	Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Maulvi Muhammad Obaid-ur-Rahman Khan.	Rai Bahadur Lala Behari Lal.
Khan Bahadur Hafiz Hidayat Hussain.	Rai Bahadur Lala Mathura Prasad Mehrotra.
Khan Bahadur Shaikh Masud-uz-Zaman.	Raja Jagannath Bakhsh Singh.
Khan Bahadur Mr. Muhammad Ismail.	Dr. Ganesh Prasad.
Khan Bahadur Saiyid Muhammad Ashiq Husain.	
Khan Bahadur Maulvi Fasih-ud-din.	

CLAUSES 55 TO 59.

Hon'ble Sir Sam O'Donnell: I move that clauses 55, 56, 57, 58 and 59 of the Bill should stand as when the Bill left the select committee, except that the words "20 years" should be substituted for the words "approximately one-third of the ordinary term of settlement sanctioned for temporarily-settled districts" in the second and third lines of clause 56(4).

Khan Bahadur Shaikh Masud-uz Zaman: I propose as an amendment to the amendment that the original words of the Bill should remain. My intention is not really to oppose the total number of years, it may be 20 years, it may be 30 years, but the roster year should be three times within the term of a settlement. Roster, as I understood it, is a simplification of the process that the plaintiff has got to take in case he institutes proceedings under section 43 of the present Act. Under section 43 there is such an encumbering procedure to be adopted that it costs a lot to the plaintiff, and at the same time a great deal of energy has to be wasted to ascertain the rates. If in the roster the rates and the scale will be fixed, it is not necessary that enhancement should also follow. If the zamindar does not apply for the enhancement of rent, the roster scales remain as they are. It will frequently happen that if the scales are not so high that there may be a temptation to institute enhancement proceedings, and there may not be any enhancement at all. So the result of my amendment will be that after 13 years there will be one roster year, that is sufficiently a long period during which a difference would occur between the rates of one year and the rates of the other roster year. With these remarks I propose that the amendment may be made that the original wording of the Bill should remain.

Pandit Govind Ballabh Pant: I rise to a point of order to inquire whether this amendment of Khan Bahadur Shaikh Masud-uz-Zaman is in order. As you may have noticed from the message of His Excellency the Governor, His Excellency accepts the period of 20 years and again in clause 67(1) (a) the Council has adopted a minimum period of 20 years for revision of rents. The roster year that is provided under clause 56(4) is mentioned and is connected with this clause 67(1) (a). This clause about 20 years has also been approved of by His Excellency and the Council has finally adopted it. So this amendment, if adopted, would be inconsistent with this provision and also with the wishes of His Excellency as expressed in his message. I submit therefore that it does not seem to be in order.

Hon'ble the President: The point of order, as I understand it, is that this amendment of Khan Bahadur Shaikh Masud-uz-Zaman is inconsistent with the provisions of clause 67(1) (a). Clause 67(1) (a) runs as follows: "Except as otherwise provided in the Northern India Canal and Drainage Act, 1873, when the rent of a tenant of the classes mentioned in sub-section (1) of section 50 has been agreed upon, fixed, enhanced or abated under this Act or the Agra Tenancy Act, 1901, or the United Provinces Land Revenue Act, 1901, it shall not be liable to enhancement or abatement until or unless (a) a period of 20 years, or such longer period as may have been agreed on, decreed or ordered has elapsed." Clause 67 therefore clearly relates to enhancements, and the period of the roster year is another thing. Now clause 56(4) as reported by the committee ran like this:—"The interval between two roster years in the same tract shall be approximately one-third of the ordinary term of settlement sanctioned for temporarily settled districts." The honourable member from Banda wishes that this sub-clause in the original Bill should remain. As far as the Chair goes, I do not see any inconsistency between the two. Clause 67 refers to the period of enhancement: clause 56(4) to the interval of a roster year. If the amendment of Shaikh Masud-uz-Zaman creates difficulties, it ought to be discussed on the merits and the House should decide upon it. But from the Chair I refuse to rule it out of order.

Khan Bahadur Hafiz Hidayat Husain: I rise to support the motion of my friend Khan Bahadur Shaikh Masud-uz-Zaman. The roster year system in this Tenancy Bill is, from the zamindar point of view, one of the recommendations of the Bill, but was sacrificed by them for securing some concession under section 40. Now that the pact has unfortunately fallen through, I do not think the zamindars can forego the advantages of the roster year system. The great virtue of this section is that the zamindars are saved a lot of bother in putting in individual applications for the enhancement of rent by engaging pleaders to support those applications, fighting out those cases, filing appeals and all the risks and attendant evils of this nature of litigation. Another advantage of a third party, as pointed out by my friend Rai Bahadur Babu Vikramajit Singh, is also secured to them. This third party would adjudicate what enhancements the zamindars should get. I have always advocated the necessity of a third party in every branch of administration, and I hope my honourable friend from Cawnpore will carry this lesson into his administration of the Cawnpore municipal board.

Pandit Govind Ballabh Pant: Sir, I am not going to repeat the arguments which I advanced more than once against the roster system. I know and I am sorry that the view which I represent is not going to commend itself to the House today. It will serve no useful purpose, and it will be a waste of energy if I repeat the arguments which, though oft repeated, did not appeal to those in whose hands ultimately the decision of this question rests. But not only do I oppose the proposal made by the Hon'ble the Finance Member, but also the amendment moved by the honourable member for Banda. It seems further to involve an additional expenditure out of State funds for a purpose which will be altogether unnecessary and useless, for under clause 67 (1. (a) the Council has finally decided that the period of enhancement will be 20 years. The roster system is meant to provide uniformity

[Pandit Govind Ballabh Pant.]

after a scientific inquiry, as it is said, to enable the courts to decide suits for enhancement or for abatement. When it has been said that enhancement or abatement will not take effect except after a lapse of 20 years, it seems altogether meaningless that the roster inquiry should take place before the expiry of 20 years from the last roster inquiry for those rates would serve for 20 years. Besides, there is not going to be such a considerable change whether in the soils or in prices or in rents in less than 20 years as to necessitate such an elaborate inquiry at considerable public expense. So this will be unnecessarily expensive and costly and will serve no useful purpose whatsoever. In the circumstances I think that the roster system, even if the Council adopts it, would be a harmful waste of money in multiplying a number of roster years between the two periods of settlement or during the course of one settlement. So above all even for those who want the roster system it should be completely satisfactory that the roster inquiry takes place about the time when the period of enhancement approaches. In these circumstances I see absolutely no occasion whatsoever for having three occasions for the inquiry by the roster officer instead of two. As was admitted by the Hon'ble the Finance Member the other day, the roster system cannot but prove costly, and I do not think we are rolling in wealth to such an extent as to waste uselessly a considerable part of our resources earned by taxing the poorest in the land.

The Council here adjourned for lunch.

After the recess

Khan Bahadur Shaikh Masud-uz Zaman : I wish to withdraw my amendment as I now find that there are some constitutional difficulties in the matter.

Amendment by leave withdrawn.

Question, that the amendment moved today by the Hon'ble the Finance Member regarding clauses 55, 56, 57, 58 and 59 in the form recommended by His Excellency the Governor be made, put and agreed to.

CLAUSE 72 (5).

Hon'ble Sir Sam O'Donnell : I beg to move that clause 72 (5) be passed as it stood in the Bill as revised by the select committee.

Maulvi Muhammad Obaid-ur-Rahman Khan : I stand to oppose the amendment which is now before the House. The section, as it was passed by this House, is such that it does not affect the rights of tenants in any way. It is a section which is very reasonable, in that if the rent was not realized in full, it simply allowed that the revenue would also be remitted. Certainly it is a matter of great surprise that even this reasonable provision has not been passed by Government and they have sent it back for the purpose of reconsideration. Sir, it shows that every amendment which was in favour of zamindars, irrespective of the fact whether it was just, whether it was an amendment which did or did not affect the rights of tenants, has been sent back to us for reconsideration. The only aim and object of this is that under this Act the zamindar should not get anything even if his claim is just. What can be a matter of greater regret to us? Had it been a matter which went against the interests of tenants and had it been

sent back to us with a view to protect the tenants and to give them more security, that would have been a different matter, but unfortunately that is not the impression that we have formed. The impression that is left upon us is that we are not to be benefited in any way by this Bill. Every right is being taken away from us either to be given to the tenant or to be taken by the Government themselves and we are not to get any benefit out of any section of this law. Sir, I record my protest, and my most emphatic protest that is at my command, against this action of the Government, and I hope that the House, and particularly my swarajist friends, will support me and will refuse to pass this amendment, which is certainly an encroachment upon our rights. We do not want anything else, but we want a remission of the revenue in case the rent is not realized. Will it not be a hardship to the zamindar to pay the revenue in full while he could not realize his rent in full? Should the zamindars not be given what is rightly due to them and what they rightly deserve? I hope the zamindars would only oppose this amendment and request their swarajist friends to support them. With these remarks I oppose the amendment which is now before the House.

Hon'ble Sir Sam O'Donnell : The honourable member who has just spoken does not seem to have appreciated the statement of reasons contained in the message of His Excellency the Governor, a copy of which is in his hands. The objection to the clause as passed was simply that the assets on which revenue is assessed already take account of petty losses which the proprietor may incur, because they include deductions for instability and short collections. Therefore the landlord is already insured against the loss from which the amendment made by the Council sought to guard him. I may also remind the Council that in the case of a serious calamity we have most liberal rules for the remission and suspension of revenue. It is only two years ago that a very serious calamity befell a number of districts in the province owing to exceptional floods, and it was freely admitted in the Council itself that we dealt most generously with the losses suffered by the landlords on that occasion. There was practically no criticism whatever about the remissions of revenue which we granted. During the course of the last three or four months letter after letter has come up before me recommending a remission of revenue because there has been serious loss of crops. Our only point was that for these petty losses allowance is already made when the assessment is made. It is therefore unreasonable that a reduction should be made, and further it is contrary to a fundamental principle of revenue settlements that the revenue demand should be liable to small alterations from year to year. I should like too to remind the honourable member who has just spoken that the Bill which we have introduced contains a great deal which is in favour of the landlords.

Hon'ble the President : Sub-clause (5) of clause 72 as adopted by the House was :—

"When remission of rent in accordance with the provisions of this section is granted, the revenue authorities shall on the report of the court grant a remission of revenue in proportion to the rent remitted for the corresponding area belonging to the same proprietor :

Provided that nothing in this sub-section shall affect tracts assessable to quinquennial land revenue."

[Hon'ble the President.]

The amendment proposed is that the following sub-clause which stood in the Bill as reported by the select committee be substituted for the one passed by the Council:—

“When remission of rent in accordance with the provisions of this section materially diminishes the assets of any mahal or patti, the revenue authorities shall take into consideration any claim made by the landlord for a remission of the revenue payable in respect of such mahal or patti, and shall pass such order thereon as the circumstances of the case may require.”

Question put, that the amendment as proposed today regarding sub clause 5 of clause 72 in the form recommended by His Excellency the Governor be made.

The House divided: Ayes, 25; Noes, 43.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
M. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows
Mr. E. L. Norton.

Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane
Mr. A. H. Mackenzie
Mr. M. F. P. Hercheuoder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Pandit Nanak Chand.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.
Rai Bahadur Babu Vikramajit Singh.

Noes.

Babu Sangam Lal.
Babu Mohan Lal Sakoria
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Lala Babu Lal.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib
Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Jhanui Lal Pande.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhyay.
Rai Sahib Babu Dip Narayan Roy.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Bhaiya Hanumat Prasad Singh.
Pandit Baijnath Miera.
Pandit Govind Balabh Pant.
Babu Ram Chandra Sinha.

Rai Bahadur Thakur Mashai Singh.
Babu Sita Ram.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Nawabzada Muhammad Ejaz Ali Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-ur-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiqi Ahmad.
Qazi Habib Ashraf.
Rai Bahadur Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Jagunnath Bakhsish Singh.

CLAUSES 80 (3) AND 81 (4).

Hon'ble Sir Sam O'Donnell: I beg to move that the provisos to clause 80 (3) and clause 81 (4) be passed in the form in which they were accepted by the select committee.

Khan Bahadur Hafiz Hidayat Hussain : I beg to oppose this motion. The clauses as passed by the Council provide for the grant of time to the tenant to pay the landlord's dues. Under both of these sections 80 and 81 the tenant, according to the select committee's report was to be given time up to six months. The Council after mature deliberation curtailed the period from six to three months. If we maintain the clauses as recommended by the select committee and now recommended by His Excellency the Governor, the result of it would be that the tenant would always be in difficulties and under debt. If you give them six months' time, they may be able to pay up the previous arrears, but would not be able to pay the rent due. We have given the landlord powers of distraint for realizing rent, and if time is given to the tenant this provision will be absolutely nullified, because when the rent is due the landlord cannot distrain the crops time having been given to the tenant to pay up the arrears already due from the crop, and the only result would be ever increasing indebtedness of the tenant. Therefore I oppose this motion and hope that the Council will maintain its decisions, otherwise the tenant will always run the risk of ejectment on account of his indebtedness.

Mr. H. David : I think the Council will admit that those tenants are ejected who cannot afford to pay up their arrears of rent. Such being the case it is not difficult to see that such tenants cannot be in affluent circumstances. Their only source of livelihood is the field which they cultivate and by which they support themselves and their family, and it is not unnatural to see that they could not be so very foolish as to let go the particular fields, the particular source of their sustenance, if they were in a position to pay up the arrears of rent. Such being the circumstances it seems to me very proper that a just and reasonable period for payment of arrears be allowed to them. Those persons, and specially my friend Mr. Hidayat Husain, who deal so much in civil law, will understand that even in cases of foreclosure of mortgages the mortgagor is allowed full six months, and even this period can also be further extended at the discretion of the civil court. Such being the case, it does not seem at all unreasonable to allow the debtor of the zamindar to have a similarly long period. Three months is too short a time as it is well stated in the message of His Excellency. Six months has got some purpose behind it. Within the next six months perhaps he will be reaping another crop and will be able to pay up the arrears and retain his fields. If this is the object, I am sure good-hearted and soft-hearted zamindars will not press that the tenants should be turned out of their fields outright.

Hon'ble Sir Sam O'Donnell : The reasons for this proposal have been given so clearly and so lucidly in the message of His Excellency the Governor, that I feel that it is unnecessary for me to add anything further. Those reasons I submit are entirely conclusive.

Question, put that the proviso to clause 80 (3) and the proviso to clause 81 (4) be passed in the form recommended by His Excellency the Governor i.e. the form in which they were accepted by the select committee.

The House divided : Ayes, 43; Noes, 28.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. E. J. K. Hallowes.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.

Babu Narayan Prasad Arora.
Babu Sangam Lal.
Babu Mohan Lal Sakseena.
Babu Bhagwati Sahai Bedar.
Pandit Nanak Chand.
Thakur Shiva Narayan Singh.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.
Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Pande.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Upadhye.
Rai Bahadur Thakur Hanuman Singh.
Pandit Baijnath Misra.
Pandit Govind Ballabh Pant.
Babu Ram Chandra Sinha.
Babu Sita Ram.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.
Rai Bahadur Babu Vikramajit Singh.
Dr. Ganesh Prasad.

Noes.

Chaudhri Jaswant Singh.
Lala Babu Lal.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Rai Sahib Babu Dip Narayan Roy.
2nd Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Rai Bahadur Thakur Masah Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Maulvi Zahur-ud-din.
Rao Sahib Abdul Hameed Khan.
Nawabzada Muhammad E'jaz Ali Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.

Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obsaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Hussin.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Khan Bahadur Saiyid Muhammad Ashiq Hussin.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Rai Bahadur Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Jagannath Bakhs Singh.

SCHEDULE IV.

Hon'ble Sir Sam O'Donnell: There are some consequential amendments. I beg to move that in Schedule IV, group E, the following changes be made:—

(1) Serial 3 be omitted altogether.

(2) Serial 4 be numbered serial 3 and read as follows:—

Serial number.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court-fees.
3	41	To acquire land	Do.	Do.	Do.

(3) Serial 5 to be re-numbered 4 and in the second column for " 41, proviso " be substituted " 42."

Question, that the above amendments be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move, Sir, that in clause 44 for the words "paid by statutory tenants for similar land with similar advantages, adopted by Council at the end of the clause, substitute "applicable to statutory tenants under section 59" as in the draft Bill.

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in clause 46 for the words "at the rate payable by statutory tenants for similar land with similar advantages, adopted by Council at the end of the clause, substitute "at the appropriate rate specified in section 59" as in the draft Bill.

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move, Sir, that in clause 50(2) for the words "rate payable by that class of tenant for similar land with similar advantages," adopted by Council, substitute "circle of village rates which are applicable under section 59 to that class of tenant" as in the draft Bill.

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move, Sir, that in clause 53(a) at the end of the sub-clause restore the words "the fair and equitable rates referred to above shall be the rates specified in section 59" which were deleted by Council.

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that clause 61(3) which was deleted by Council be restored.

Question, that the above amendment be made put and agreed to.

Hon'ble Sir Sam. O'Donnell : I move, Sir, that in clause 64(1) for the words "fair and equitable rates payable by tenants of the same class for land of the class or classes of soil determined in accordance with the procedure hereinbefore laid down," adopted by Council, substitute the words "the sanctioned rates and records, unless for special reasons to be recorded, the court sees reason to depart from them," as they stood in the draft Bill.

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move, Sir, that in clause 67(1) (a) before the words "twenty years," adopted by Council, insert the words "a period of".

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I have now some purely formal amendments to move. I move that in clause 3(6) for the definition of landlord as amended be substituted the following :—

"and 'landlord' means the proprietor of a mahal or of a share or specific plot therein."

This is purely consequential on the definition of landlord in clause 3(6).

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move the following formal amendments :—

- (1) Clause 4. That the word "landlord" be substituted for the word "proprietor" wherever the word "proprietor" occurs in clause 4.
- (2) That in clause 7 the word "landlord" be substituted for the word "proprietor" in the second proviso of clause 7 as amended by Council.
- (3) That the word "landlord" be substituted for the words "proprietor of the mahal" in line 5 of clause 11.
- (4) That the word "landlord" be substituted for the word "proprietor" wherever the word "proprietor" occurs in clause 14(1) and 14(2).
- (5) That the word "landlord" be substituted for the word "proprietor" wherever the word "proprietor" occurs in clause 15(2).
- (6) That in clause 185(c) the word "landlord" be substituted for the word "proprietor" wherever the word "proprietor" occurs.
- (7) That in clause 188(1)(b) the word "landlord" be substituted for the word "proprietor" wherever the word "proprietor" occurs.

Question, that these amendments be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move, Sir, that on page 1, last two lines, clause 3(3), in the amended last paragraph after the words "or its value" and before the word "payable" the words "deliverable or" be inserted.

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move that on page 3, clause 4, the words "in accordance with the following provision" at the end of clause 4(e) immediately before the proviso be excised.

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move that on page 4 in clause 4 in the proviso after the scale the word "secondly" be inserted after the word "provided."

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move, Sir, that in clause 16 (page 7) the paragraph inserted between the second and third paragraphs of the draft Bill read as follows :—"And every person (except in Bundelkhand) who is at or after the commencement of this Act a tenant of Government estates other than nazul land."

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move that in clause 17(1) (page 7), clause (a) of this sub-clause, as amended, read as follows :—

(a) a landlord or a permanent tenure-holder,

(j) a Hindu woman having a limited estate, with the written consent of the nearest reversioner or the sanction of the District Judge :

That clause (j) be placed after clause (i) in this sub-clause.

That clause (b) of this sub-clause read as follows :—

“a lambardar, with the written concurrence of all the co-sharers whom he represents, and if any co-sharer is a minor or otherwise unable to act, with the sanction of the District Judge obtained on the application of the natural or certified guardian of such co-sharer.”

That the proviso added to clause (g) of this sub-clause read as follows :—

“ Provided that, if the minor has a father or a brother as his natural guardian, the written consent of the natural guardian shall be deemed sufficient.”

Question, that the above amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I move that in clause 18(7) (page 9) for the words “competent civil court” at the end of this sub-clause be substituted the words “civil court which has jurisdiction to hear appeals from the court in which the question of proprietary right was decided.”

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in page 9, clause 19 at the beginning of the clause be added :—“ Subject to the provisions of sub-section (3) of section 8.”

That in sub-clause (a) of this clause as amended the words “or a fixed-rate tenant” be struck out in the phrase “or a tenant holding from a permanent tenure-holder or a fixed-rate tenant.”

That clause (h) of the second proviso to the clause as amended be removed from the second proviso and that it be placed in the third proviso, which will then read as follows :—

“(3) Provided, thirdly, that no statutory rights shall accrue in—

(a) lands notified by Government in the Gazette as tea gardens before the commencement of this Act;

(b) lands used for casual or occasional cultivation in the bed of a river.”

Question, that these amendments be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in page 10, clause 20, proviso (2) in the Bill be renumbered (3), as a new proviso (2) has been inserted in the Bill.

Question that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in page 12, clause 25(1), between the words “in the case of a widow” and “in section 24” the words “of class II” be inserted.

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that in page 18, clause 29, sub-clause (8), read as follows:—

"all sub-leases shall terminate with the term of settlement."

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that in page 14, clause 38, line 3, after the word "holds" the following words be inserted:—

"or by the expiry of the term of settlement."

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that in page 15, clause 37, read as follows:—

"A division of a holding or distribution of the rent payable in respect of a holding or any portion thereof, or such division and distribution shall be effected only (a) by agreement between the co-tenants, or (b) by the decree in a suit instituted under this section by one or more of the co-tenants against the others:

Provided that such division or distribution shall not be binding on the landholder unless he agrees thereto in writing."

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that in page 74, Schedule IV, group B, the words "or distribution of rent or both" be added after "For division of a holding" in column 3 of serial No. 1, and that for the figures "37(2)" in column 2 the figure "37" be substituted.

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that in page 15, clause 38, line 4, the words "or permanent tenure-holder" be inserted after the word "landlord."

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that in page 24, clause 65, line 2 of the clause as amended, after "section 54" the figure "(1)" be deleted.

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that in pages 26 and 27, sub-clause (7) of clause 73 be renumbered (3) and be inserted after sub-clause (2).

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that in page 26, sub-clauses (3) and (4) of clause 73 be renumbered sub-clauses (1) and (2) of clause 74, that after the figure (2) in line 2 of sub-clause (3) of the present clause 73, be added the words "of section 73", and that after the word "remitted" in line 2 and after the word "suspended" in line 4 of sub-clause (4) of the present clause 73 be added the words "in accordance with the provisions of section 73" in both places.

Question, that these amendments be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in page 26, sub-clause (5) of clause 73 be re-numbered 75, and that after the word "suspended" in line 1 be added the words "in accordance with the provisions of section 73."

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in page 27 the sub-clause (6) of clause 73 be renumbered 76, and that after the word "remitted" in line 2 and after the word "auspended" in line 4 be added the words "in accordance with the provisions of section 73" in both places.

Question that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in pages 35, 36, clause 107 (2), in lines 3, 4 and 5 the words from "belonging to" in line 3 to "VII and" in line 5 be omitted.

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in page 59, clause 219, in line 1 for the word "and" between the figures "73" and "74" a comma be substituted and that after the figure "74" be added a comma and the words "75 and 76."

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in page 60, clause 225 of the Bill be numbered as sub-clause (1) of clause 225.

That the additional clause 229A be numbered as sub-clause (2) of clause 225.

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in page 65, clause 265, in proviso (c) for the words "under section 17 of this Act" the words "otherwise than in accordance with the provisions of section 17 of this Act" be substituted.

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in page 68 the heading "Power to make rules" in Chapter XVIII be deleted and the word "Miscellaneous" be substituted.

Question, that this amendment be made, put and agreed to.

Hon'ble Sir Sam O'Donnell : I beg to move that in page 69, sub-clause (2) of clause 276 as amended, the words "by a landlord" be inserted after the word "instituted" in line 2.

That in line 5 "plaintiff" be substituted for "plaintiffs" and "him" for "them".

That in proviso (a), line 3, for the word "a" before "landlord" "the" be substituted.

Question, that these amendments be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that in page 70, First Schedule, for item I be substituted the following:—

A.—The districts of Almora and Garhwal.

B.—(1) The following villages of the Tarai and Bhabar Government estates in the district of Naini Tal:—

PARGANA BAZPUR.

<i>Serial No.</i>	<i>Names of villages.</i>	<i>Serial No.</i>	<i>Names of villages.</i>
1	Bajawala.	14	Hazira.
2	Bannakhera.	15	Haripura.
3	Bannakhera Sani.	16	Harsan.
4	Banskhera.	17	Khamari.
5	Banskheri.	18	Maindaya Hattoo.
6	Baraihni.	19	Rajpura No. 1.
7	Bhainsia.	20	Ratanpuri.
8	Bhajwanagla.	21	Somalpuri.
9	Bhikampur.	22	Sheopuri.
10	Bijai Rampura.	23	Thapaknagla.
11	Chanakpur.	24	Kelabandwari.
12	Gularia Gobra.	25	Faridpur.
13	Gulzarpur.		

PARGANA GADARPUR.

1	Alakhdei.	9	Madnapur.
2	Andkhera.	10	Maholi jungle.
3	Beria.	11	Mukandpur.
4	Bari Rain.	12	Nandpur.
5	Buxaura.	13	Pipalia.
6	Khanpur Pachham.	14	Kopa.
7	Khanpur.	15	Jafarpur.
8	Kulha.	16	Gadarpuri.

NORTH OF KASHIPUR.

1	Kamdebpur.	6	Kandala.
2	Beria.	7	Birpur Lachi.
3	Lalitpur.	8	Birpur Tara.
4	Karailpuri.	9	Rajpur.
5	Thari.	10	Pipalsana.

IN KHUSHALPUR CIRCLE.

1	Khushalpur.	3	Lampur Lachi.
2	Lampur Moti	4	Shahbazpur.

(2) The remainder of the district of Naini Tal [exclusive of the pargana of Kashipur and of the following villages in the Tarai sub-division:—

<i>Name of Peshkari.</i>	<i>Name of village.</i>
Bazpur ...	{ Kankata. Kuwa Khara, Rajpura.

Name of peshkari. *Name of village.*

Kichha	...	...	{ Anjania. Piru Nagla. Darau.
Kilpuri	...	...	{ Bijti. Bitha Akbar. Haldua. Malpuri. Matha. Nakatpura. Pipalia Nathu. Sabepur. Sainjana. Sarkara.]

That for "II" be substituted the letter "C."

Ditto ditto "D."

Pandit Govind Ballabh Pant: The Council the other day adopted a motion to the effect that this Act should be extended to the villages owned by the Government in the Tarai and Bhabar Government estates excepting the villages mentioned in the schedule which has just been referred to by the Hon'ble the Finance Member. For this reason I move the following amendment, namely that after the word "Kashipur" a comma be inserted and the following words added:—"of the Government-owned villages in the Tarai and Bhabar Government estates not specified in B (i) above."

Hon'ble Sir Sam O'Donnell: I accept the amendment.

The amendment was put and agreed to.

The amendment, as amended, was put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move the following consequential amendments:—

That in clause 54 the figure "1" at the beginning be deleted.

That in clause 65, as amended by the Council, the figure (2) at the beginning be deleted.

That in clause 72 (5) the word "landlord" be substituted for the word "proprietor" in line 4.

That in new sub-clause (f) of clause 274 for "section 19, sub-section (h) of the proviso" the word "clause (a) of the third proviso of section 19" be substituted.

Question, that these amendments be made, put and agreed to.

Hon'ble Sir Sam O'Donnell: I now beg to move that the Bill be passed. In doing so all that I need say is that I desire to congratulate most heartily and sincerely the Council on the way in which it has dealt with this Bill. Legislation concerning the relations between landlords and tenants present exceptional difficulties. It is inevitable that on such a subject there should be differences of opinion, and we have had our differences of opinion. The Council has nevertheless risen to the height of its responsibilities and it has accepted the Bill in a form which will not only confer immense benefits on the tenants

[Hon'ble Sir Sam O'Donnell.]

of these provinces but will in the long run be of the greatest benefit to the landlords themselves. It will do more than anything else could to enable them to retain their ancient and traditional position. I feel sure that the work which the Council has done on this Bill will redound permanently to its credit and enhance its reputation.

Rai Bahadur Lala Mathura Prasad Mehrotra: I beg to draw your attention to sub-section 2 of paragraph 85 of the Manual of Business which says that on the day on which amendments are made in a Bill no motion that the Bill be passed should be made and I object on this ground, and would move that the debate on the passing of the Bill be postponed to the 5th August, 1926. My reasons are as follows. By the postponement of the debate I do not want that there should be any delay in passing of the Agra Tenancy Bill. We all know that most of the big zamindar members are absent and by asking for the postponement of the debate members should not think that I would be increasing the strength of the zamindar party because there is not the least possibility of their coming up to Naini Tal. Then, Sir, we are also in a hurry to go back to our homes to look after the elections for which very little time has been left. The objects of my motion are two. Firstly, that it should not be passed on the same day on which important amendments have been made, and, secondly, that we have received a provisional list of business and the Oudh Rent Amendment Bill is placed on tomorrow's agenda and after that there is the Land Revenue Act. I want that the consideration of the debate on the passage of this Bill should be postponed till the passing of the Land Revenue Act.

Hon'ble the President: That is not your motion, and you cannot amend it now.

Rai Bahadur Lala Mathura Prasad Mehrotra: I will explain, Sir, I wish that there should be no interference with the agenda; and at the same time that the Land Revenue Bill should also be passed. The relations between the tenants and the landlords under the Tenancy Bill are more or less the same as between the Government and the landlords and we have to see what Government gives us there in compensation for the life-tenure in the Tenancy Act.

Hon'ble the President: I am afraid the honourable member is going into the merits of the Bill now. He stood to draw my attention to a Standing Order and now he is developing this point against the Bill.

Hon'ble Sir Sam O'Donnell: I do not see how there can be any motion for adjournment without the consent of the member in charge. Apart from that, I do not see any reason why the debate should be postponed. The honourable member has admitted that the sole object of his motion for postponement is to defer the passage of this Bill till after the 5th of August.

Hon'ble the President: There are two points made by the honourable member from Sitapur, representing the British India Association. First is about paragraph 85 of the Standing Orders. Paragraph 85(2) says "if any amendment be made, any member may object to the passing of the Bill at the same meeting; and such objection shall prevail, unless the President, in exercise of his power to suspend this

order, allows the Bill to pass." But the honourable member has forgotten that we are dealing with this Bill which has now become a recommended Bill, that is, in respect of which a recommendation has been made by His Excellency the Governor and on that account the Bill is more within the purview of rule 20C and is taken away from the Standing Order. Sub-rule (5) of rule 20C lays down clearly that "subject to the provisions of this rule and of rule 20B, the ordinary procedure of the Council in regard to Bills shall, so far as may be, apply in regard to recommended Bills". So that it is clear that it is rule 20C which would apply to this Bill and not the Standing Order. I said in the beginning today that the Standing Orders stand suspended for discussion on the message of His Excellency the Governor on account of this rule being in operation, in so far as they may be in conflict with rule 20C.

As regards the second point that the Bill be postponed, I am afraid that, although he made it clear that he wanted the postponement till after the 5th August, he does not give any date in his motion and the effect would be to postpone the Bill indefinitely. So, in accordance with the ruling I gave this morning, this is a dilatory motion which is governed by rule 20B, sub-rule (3). This is a dilatory motion, the effect of which would be to delay the passage of the Bill and, moreover, I am afraid the motion cannot be made without the consent of the Member in charge, and the Member in charge of the Bill seems to object. Therefore, I am afraid this motion cannot be made. It must be realized that the Chair has no sympathies and antipathies, no likes and no dislikes. The Chair has only to interpret the rules as they stand and the rules are quite clear, and the language is clear. I am afraid, therefore, that I cannot uphold the objection of the honourable member.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : I rise to move that the consideration of this Bill be postponed till tomorrow.

Hon'ble the President : I cannot allow that motion to be moved. The only thing that honourable members can do is to go on speaking, and then, of course, the Bill will come up again tomorrow.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : I rise to oppose the motion of my esteemed friend the Hon'ble the Finance Member. My reasons are strong and I hope that in the end I shall succeed in convincing the House that the Bill is a mischievous piece of legislation. I must tell the Council at the very outset that I am not opposed to the aims and objects of the Bill. The question before the House is whether this Bill achieves the aims and objects for which it was intended. It was said that the Bill would be a boon to the tenants and it would also be beneficial to the landlords. Now, let us see how it is beneficial to the parties concerned. In the first place we find that it does not authorize landlords to have sufficient land for their own cultivation. We find that the accrual of occupancy rights is stopped. We find that seven-year leases and old contracts have not been respected. We also find that some sections of this Act prescribe a very cumbersome procedure. In this Bill you will find that tenants have been deprived of some very important privileges. Landlords too have been harmed a good deal. In the beginning it was stated that if zamindars would agree to the conferment of life tenancy they will have in return some substantial privileges. Now we find that no privileges have been conferred on them.

[Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.]

Coming to sections 80 and 81, the Council will find that six months' period has been allowed to tenants and it is said to be a sort of respite. On the other hand we find that no respite is allowed to the unfortunate class to which I happen to belong, I mean the landlords. Take, for instance, the case of a landlord who owns only one village. The tenants of that village conspire against him and take their stand on the wording of sections 80 and 81. They tell the landlord :—" We shall pay you rent, but after six months." The tahsildar will issue a warrant of attachment against the landlord, and he will have either to contract a debt from some exacting money-lender to pay the arrears of revenue at the stated time or his property will be sold. This is unjust, and will in some cases bring about the ruin of landlords. We find in this Bill a clause which is numbered 276. This most objectionable and obnoxious clause mars the purposes of this Bill to a great extent. You will not find in an enactment of any civilized country a clause like that. It is known to almost every one of us that in the year 1924 or 1925 an illegal circular was issued by the Board of Revenue stopping all ejectment suits. A hue and cry was raised from every corner of the country against this unjustifiable order. Questions were asked in this Council, motions were also moved, but that order was allowed to stand. It was not withdrawn by Government, though the legislature expressed its disapproval of that order. That order is now being legalized by this clause. A Bill which includes a clause like that is most objectionable and is opposed to the principles of legal science. Our laws must be such as to command respect from every member of the public. If clauses of this kind will be included in our laws I am positive that our enactments will cease to command any respect, and chaotic results will follow.

This Bill is likely to increase the tension between landlords and tenants. The legislation that tends to bring about a state of disunion between the parties concerned will be a blemish on the Statute Book. It will be looked upon as mischievous and ill-planned. The Bill proposes to confer life tenancy on all non-occupancy tenants. Life is uncertain and so this tenure will be. In my opinion life tenancy will not give any fixity of tenure to our tenants and specially to the old ones. I am not, however, in favour of conferring occupancy rights on all non-occupancy tenants. Long-term leases were far more desirable than life tenancy or occupancy rights. There are, Sir, many provisions in this Bill which will be disapproved by every man having legal knowledge. In connexion with this Bill, Sir, about 30 amendments have been proposed on the basis of the message of His Excellency the Governor. This procedure, too, is unprecedented, though not absolutely illegal. I remember that in connexion with the Oudh Rent Act His Excellency the Governor recommended the re-consideration of only one clause or at the most two clauses. I remember that when the Oudh Chief Court Bill was sent back to the Legislative Council for re-consideration, the message related only to one or two items. But, Sir, contrary to all these precedents, we find that the message of His Excellency the Governor in connexion with this Bill relates to many matters. This, Sir, is an encroachment on the rights and freedom of this Legislature. I will also add that the Hon'ble the

Finance Member was pleased to hand over this message to you when many members of this Legislature were absent. Advantage was taken of the Standing Orders and we were not allowed an opportunity to study the message of His Excellency the Governor minutely. We were asked to discuss it without carefully studying it. Now, Sir, another very ridiculous thing has happened in connexion with this Bill. I remember that when sub-clause (d) of clause 4 was discussed about 99 members were present in this House. The decision of 99 members has been revised today by about 60 members. If, Sir, 50 or 60 members arrive at a certain conclusion, their decision could be referred to a bigger House, a fuller House. But on the contrary I find that the decision of the majority was referred to the minority and the minority sat in judgement over the majority. I think, Sir, this is opposed to all procedure, all precedents and all principles of democracy. Now, Sir, in face of these defects, I do not think this House will see its way to accept the motion of the Hon'ble the Finance Member. This is a Bill, Sir, which harms everybody, which harms the tenants and which harms the zamindars. To recapitulate I must say that this Bill is opposed to the principles of jurisprudence. It is opposed to the principles of equity. It legalizes an illegal order. It is the outcome of a serious encroachment on our rights and privileges. It is not acceptable to the parties concerned and will involve them in endless litigation. Such a Bill should not be passed by this Hon'ble House. With these words I oppose the motion of the Hon'ble the Finance Member and I ask the Council to throw out the Bill.

Maulvi Muhammad Obaid-ur-Rahman Khan: I stand to associate myself with what has been said by my honourable friend Maulvi Fazl-ur-Rahmar Khan. First of all, I want to make it clear that my opposition to the passing of this Bill is not in any way due to the fact that we grudge the rights that have been conferred on tenants. As a zamindar I assure the House that we welcome those rights which have been conferred on the tenants, and the very fact that we accepted the principle of statutory tenancy without any hesitation and without any hitch is evidence in support of our motives. It was simply with a view to protect our rights that we had been moving various amendments during the course of the debate. We have simply tried to discharge our duty to the best of our abilities, but the result is very disappointing and discouraging. There is no limit to my regret, to my disappointment and to my sorrow when I find that even those demands which were passed by a unanimous non-official vote have been sent back for the purpose of reconsideration by this House. What is the value of votes? I think it is quite useless to be a member of this Council and to seek re-election and to take part in the deliberations of this House which does not count our opinions and our unanimous decisions. After all, the decisions of the minority are to prevail over the decisions of the majority. Is it a democratic House? Are not these reform schemes a farce and has not the saying of Mr. Tilak proved true that they are unsatisfactory and inefficient? The Bill has been discussed in this House to the discontent of the zamindars and to the discontent of the tenants. So far as I can see, scarcely will there be found a single zamindar or a single tenant who will welcome this measure which has been forced upon us in a way which is well known to the members of this House. The impression outside will be that

[Maulvi Muhammad Obaid-ur-Rahman Khan.]

the Legislative Council is responsible for the passing of this Bill, but I want to make it clear that it is not so. Our will has not been carried out. Sometimes one party has combined with another party in order to defeat the third party and *vice versa*. Now, what will be the result if this Bill is passed? As we have pointed out more than once during the course of discussion, litigation will increase to our great disliking. We wanted that litigation should decrease so far as possible, but our hopes and wishes have not materialized in this respect. Not the least heed has been paid by Government to amendments which were moved by members of one party or the other having this object in view. The other day section 143 was passed in a form which was against the intentions of the Select Committee. The majority of the Select Committee has not been taken into account; the majority of this Council itself has not been taken into account and only the wishes of the authors of this Bill have been embodied in it. I am at a loss to understand why we were taken into confidence and why the Bill was not published in the Gazette like previous Bills. It would have been much better if the Government had published it in the Gazette without referring it to the Select Committee or introducing it in the Council. At least I want to make it clear that we are not responsible for many things that have been passed. Sir, I fear that the aim and object with which this Bill was introduced will not be achieved to any extent and I cannot say what the result may be of this general discontent in the whole province. Those who are affected by the Bill will not be pleased with having it; certainly one will grudge it in one way while the other will grudge it in another way. The roster which was disliked equally by the swarajists and the zamindars has found its place in the Bill; it is there and it will be enacted into law; and so on and so forth.

With these reasons there is no course left to me but to oppose the motion for the passage of the Bill and to request all non-official members to take part in this opposition and not to allow this Bill to be passed by their votes or at least if anybody will not adhere to it then he should abstain from the House, so that it will not be for him, to be a party to the passing of this Bill.

With these words I oppose the motion of the Hon'ble the Finance Member which is before the House.

Rai Bahadur Babu Vikramajit Singh: I have heard the two speeches of the honourable members of the landlord party and it appears to me regrettable that this attitude should be taken at this stage of the passing of the Bill. I hope that the other honourable members of that party will not follow suit, as the attitude taken up, I submit, is neither reasonable nor broad. If the intention was not to have a Bill of this nature, then I think the opposition should have been entered into at a very early stage. After the exchequer has spent something like fifty to seventy five thousand rupees, if only on a few points on which the zamindar members have been defeated this Bill is going to be thrown out I think it will be a very very regrettable incident indeed. To an ordinary observer it appears that the Bill is not so bad as it has been painted by the two honourable members. It

was intended to give a fixity of tenure to the tenants and I think that there will not be single tenant who will not understand the value of the concession that has been awarded to him. To say that the tenants will be discontented after they have got a fixity of tenure is, I think, not representing the true state of affairs. Now a tenant can be ejected at any time; then he will be getting a life tenancy. He must consider it to be an improvement on his present position. There is not the slightest doubt that the condition of the tenant has been improved under this Bill, as it was intended, and in return for that the landlords have been given the right that no occupancy tenancies will be created in future. I find that during the last 25 years, if my information is correct, thirteen per cent. occupancy tenancies have been created. Now there are 73 per cent. occupancy tenancies, so that at that rate probably in fifty years all the tenancies might have become occupancy tenancies. Consequently the extinction of the occupancy tenancies in future may be taken as a return for the grant of this concession. I do not mean to say that this is an adequate return, but after all it is a return of a substantial nature.

Then Sir, sections have been enacted with reference to *sir*, and acquisition which give certain privileges to the zamindars. They may not be satisfied in view of certain amendments which have been passed today, but it cannot be said that the Bill is so unjust, so inequitable, as to be thrown out and not to be passed into an Act.

Therefore my submission is that this attitude from the landlord members of the House who have been the greatest co-operators with the Government is rather inexplicable. An attitude like this from those who come forward as non-co-operators is understandable, but such an attitude from those who always co-operate with the Government and give up the co-operation simply because on a few points they have been defeated is not a sound attitude. Now, Sir, if these amendments which have been passed today—four amendments against the wishes of the landlord members—if they had not been passed, then there would have been absolutely no difficulty in passing the Bill and the landlords would have been quite jubilant. That is my inference that I draw from their attitude and from the manner in which the debate has been conducted. I never thought for one moment that the zamindars were against it till such time that the message came from His Excellency the Governor with reference to these further amendments. This is my reading of the situation. Therefore it will serve no useful purpose in putting forward an opposition of this nature. These Acts after being given a trial can always be amended. If it is found that they are acting harshly on the landlords or the tenants an amending Bill can be brought before the Council either by the Government or by a private member. But, having gone through all these stages, having had this Bill drafted by a committee on which landlords were very strongly represented, having passed this Bill through the Select Committee on which landlords were very strongly represented, I think, Sir, it is neither fair nor just that opposition should be led to the passing of the Bill at this stage. Therefore, I think, the House will be well advised in not putting forward an opposition and will allow the Bill to be passed into an Act.

Mr. Tracey Gavin Jones: I wish to say a few words upon this Bill before it is put to the vote. I do not like the Bill, but my objections are fundamental and they cannot be taken into account now. The Government have considered this Bill for a long time and they have put forward this measure with the very best of intentions. They wish to provide protection for the tenants and they honestly and sincerely believe that they are doing so without unduly harming the landlords, and I think it is up to us now to accept the Bill. We have spent a lot of time on it, and it cannot be thrown out now. I must say that I have great sympathy with the landlords and I cannot appreciate the opinion of the honourable member who has just spoken. It is natural that the landlords should oppose the Bill. My reason for considering the Bill as fundamentally wrong is that I think this matter should be viewed from a different view-point altogether to the view-point that the Government have taken. As far as I can see, the Government are obsessed with the idea of the oppressed tenant and the bad landlord, but there are some good landlords and there are no doubt many bad tenants. Now the effect of this Bill is to give safety of tenure to the bad tenant and to alienate the good landlord from his land. There are points on both sides. The view-point that I take about it is that a Bill of this nature should promote co-operation between the landlords and the tenants. Does the Government really think that this Bill will do so? I do not think so. The difficulty before the Government of course is that there are previous Bills on which they had to work. The Act of 1901 is, I think, a bad one and has admittedly proved a failure. I quite see that the tenants have to have protection but surely there are other ways of protecting them than by alienating all the landlords from the land. When you alienate the landlord from his land and still leave him a share in it with powers to eject the tenant you are inviting the landlord and the tenant to oppose each other. They become natural enemies instead of co-operating with each other. It seems to me that the better way to deal with the matter is that if a landlord proves to be a bad landlord some system of land purchase should be devised by which that landlord may be got rid of altogether. You cannot have harmony and contentment when you create a dual control and I believe that within the next five years at least the Government will have to bring forward another Bill to settle the differences between the landlords and the tenants, which I fear this Bill will aggravate.

There is one point I would ask Government to reply to. As administrators of the Court of Wards do they really think that in putting through a measure like this they are acting in the best interests of their trusteeship? As I interpret this Bill they are depriving the prospective heirs of the control of their property. If I were a good landlord I should dislike this Bill intensely. At the same time I appeal to the landlords not to oppose the Bill at this stage. Legislation of this nature cannot be put through for the benefit of everybody, and the Government think that this is an important urgent matter. His Excellency has appealed to us to look upon it from an unselfish point of view, and there is no doubt about it that this Bill will, to some extent, assist the tenant who is hardly treated by the bad landlord.

There is one point of view taken up by the Government which I cannot understand and that is that they seem to divorce the question of the development of agriculture from the question of land tenure. When I last-

spoke on this subject I pleaded with the honourable members of this House that they should consider the Bill from the point of view of the development of agriculture, as apart from whether the land was to be cultivated by a tenant or a landlord. The Hon'ble the Finance Member replied, and said that the development of agriculture was provided for in the Bill. He seems to look upon the development of agriculture from the narrow point of view of the acquisition of small plots of land for the establishment of model farms. This is a very small matter. I think the matter should be looked upon from a very much wider point of view and I should have liked, if possible, for this Bill to have been postponed till the Royal Commission report on agriculture had been made. I cannot see how you can divorce land tenure entirely from development of agriculture. The Sugar Commission reported that the development of the sugar industry was greatly hindered by the conditions of land tenure. The importance of the development of agriculture has not, I think, been fully realized by the Government, and I am perfectly sure that the Royal Commission's findings are bound to have some bearing on land tenure. It is impossible that the same Bill can be advantageously applied to such a large area as the whole of Agra province. Conditions must vary in different districts and for different crops, and I think this Bill might have been postponed until after the findings of the Royal Commission were known. I have the development of agriculture very much at heart and if the House will bear with me for a little, I would like to point out how apallingly backward are the conditions of agriculture in this country, and I do not think that this is fully realized by either the Government or the honourable members of this House. Take the sugar industry only. I do not know whether honourable members realize it, but India is the largest sugar-producing country in the world, and this province is by far the largest sugar-producing province in India, and yet the sugar industry is in a very primitive stage in this country, and large quantities of sugar have to be imported from Java. This means that of this very large production of sugar in this country 35 per cent. of it is wasted because this sugar is not properly cultivated and the cane not properly handled in the manufacture of sugar. A very good key to the progress of agriculture in any country is the amount of manure that is used in a country. In this country we all know that the most valuable manure, cow dung, is burnt, and that thousands of tons of bones are exported—90,000 tons are exported every year. I do not know whether honourable members realize that a very large quantity of sulphate of ammonia is manufactured as a by-product in the coal fields and the whole of this is exported to more progressive agricultural countries like Java and Japan.

Mr. H. David : I rise to a point of order. Is the honourable member relevant to the motion before the House?

Hon'ble the President : He is going to connect it with land-tenure and tenancy somehow.

Mr. Tracey Gavin Jones : Compare India with Egypt. Egypt has a population of 15 millions against our 300 millions. They import two hundred thousand tons of Chilian nitrates (and 10,000 tons of superphosphate and the whole import of manures here is only twelve thousand tons and almost the whole of it goes to one progressive agricultural industry in India, the tea-gardens.

[Mr. Tracey Gavin Jones.]

The question of land-tenure will have to be considered again. But I do not propose to oppose this Bill at its present stage. It has gone too far, and I think the landlords should have considered the matter before, and opposed the whole Bill earlier and not just at this last stage. The question of agricultural development is the most vital question of the day in India and is intimately connected with land-tenure. As regards the Government, I think they have behaved in the most courteous manner. I must say I admire the patience and pertinacity, the endurance and the tact and the ability for debate of the members sitting on the front benches of the Government and I think we owe them our thanks for the way they have carried through this very long, very complicated and this very difficult Bill, and I hope that at the present stage the landlords, with whom I sympathize heartily, owing to the sacrifices that they have had to make, will make one more sacrifice and not oppose this Bill now.

Khan Bahadur Mr. Muhammad Ismail : Now that we have reached the end of our labours it behoves us to consider the provisions of this Bill in a dispassionate manner. We ought to see whether after all this expenditure of so much money and time we can be proud of our product. I am afraid if the provisions of this Bill are analysed by an impartial judge, both from the point of view of the zamindars and the point of view of the tenants, the verdict would be against this Bill. The best method of comparison is to see whether either the zamindars or the tenants will fare better after this Bill has become law. In order to do so I wish to invite the attention of the honourable members of this House to some of the important provisions of the present Act, and to those of the new Bill that is to become an Act, first from the point of view of the zamindar and then from the point of view of the tenant, it is a well-known fact that hitherto nearly 25 per cent. of the cultivable area was occupied by non-occupancy tenants and the land owner had complete control over that area ; it was for him to select his tenant, and if he found that the tenant was a bad payer, or did not look after the fields properly or that he was a bad tenant or from any other point of view it was open to the zamindar to turn him out and to give the land to a more deserving tenant. Now, by a stroke of the pen the principle of life tenancy, which I hope to convince the Government is a most pernicious system, has been introduced, and the zamindar has lost entire control over nearly one-fourth of the land owned by him. Then, Sir, going further, under the present Act of 1901 a zamindar could bring enhancement suits after ten years. Now that period has been doubled. It cannot be said that it is to our advantage. I dare say the Hon'ble the Finance Member will say:—" You were one of those who voted for it." Yes, we voted for it under different circumstances and we had regard to other provisions of the Bill to counterbalance the loss we were to suffer under this provision. If one takes prescription from an expert doctor and you strike out all the medicines that are entered there and give only one of the medicines mentioned and if that medicine does harm, it would be a mistake to come down upon him and say:—" You have selected the doctor and you got the prescription." Further on, as to the limit of enhancement. Up to this time there was no limit ; it could go up to 500 per cent. Now it is limited to 25 per cent. Again, Sir, a similar objection would be raised, but those

objections as I have pointed out will not be valid. If you examine the important provisions of the Bill you will find that on the whole it is certainly not advantageous to the zamindars.

Let us examine it from the point of view of the tenant. He has got as much interest in the land as the zamindar, and we have to consider it from his point of view also. A great boon has been conferred upon him, and that boon is the life tenancy. It sounds very nice, and I daresay it will be appreciated very much for the first five or six years. But, Sir, when the heirs of the statutory tenants are ejected and the land falls vacant you will find that the question of rack-renting and *nazrana*, which is so much objected to by the Hon'ble the Finance Member, will come into play, and the zamindar will be tempted most strongly tempted, to exact high *nazrana* and to demand a high rate of rent from the tenant, and the tenant who is in need of land is very likely to borrow money and he will be crippled for life, and that tenant will never thank Government and those gentlemen who are in favour of this system of life tenancy. When *nazrana* is exacted from the tenant and to raise the necessary money he goes from door to door he will never bless this Bill on which we have spent over three months, he will never thank us for this production of ours.

Let us go further. Up to this time the zamindar could pick and choose which tenant to sue for enhancement and which tenant not to sue. He took into consideration the circumstances of each tenant, he could distinguish whether a particular tenant was capable of paying enhancement either from the point of view of his having a large family or from any other point of view. But the roster system which has been introduced now will perforce induce the zamindar to apply for enhancement automatically against all tenants, occupancy and life tenants alike. It will be said very likely:—"If you are tender-hearted why should you apply for enhancement? You need not apply when you do not like to." But when we know that the bugbear of settlement is ahead and that Government revenue will be raised on the basis of the roster, I do not think that any sensible and prudent zamindar could resist the temptation of applying for enhancement, whether a tenant is capable of paying it or not. Then, Sir, we know from the experience of settlement officers that, however capable and efficient the settlement officer or the roster officer may be, a great deal of work will have to be left to subordinate officers. Those who have experience of settlement probably will not be very much enamoured of the prospect. Again, probably, the Hon'ble the Finance Member will say that it was passed by the majority of this House and therefore you have no reason to complain. But what were the circumstances under which the roster year system was thrust upon us? Up to this time the zamindar invariably gave the tenant considerable time in order to pay the rent and if he found that the tenant was not in a position to pay the rent he gave him time and as a last resort he brought a suit. Even then if the tenant is not able to pay then he can make an application under section 59 of Act II of 1901 and the ejectment of the tenant would be ordered in certain circumstances. Now, Sir, we have got this ingenious section of ejectment by notice. For non-payment of rent the tenant will be ejected and the zamindar knowing that he has not got any other way to get rid of the tenant will have to take advantage of this section as much as possible. Therefore, if you take up this Bill either from the point of view of the zamindar

[Khan Bahadur Mr. Muhammad Ismail.]

or from the point of view of the tenant and judge it impartially without any prejudice, then I think you will come to the conclusion that this is a most unfortunate Bill and that this will create a great deal of mischief in future.

Let us examine it from another point of view and see whether it is a wholesome Bill. The Hon'ble the Finance Member has observed more than once that the task to the legislature will be finished once the Bill has become law. But the working of it will to a great extent depend on the mutual relations of the zamindars and the tenants. From the day this Bill becomes law there will be a kind of suspicion between the zamindars and the tenants. The tenant will believe that probably there is something hidden in this new Act which may act unfavourably against him. He will always be on the look-out to safeguard himself against the zamindar. The zamindar naturally, having lost all control over the tenant, will devise ways and means to get rid of the tenant. Therefore the feeling between the landlords and the tenants is bound to be strained and is likely to endanger the future progress of the country.

Mr. Gavin Jones in his admirable speech remarked that, although this Bill is most objectionable from various points of view, but having spent so much time over the deliberation of this measure it is desirable that we must pass it into law. Sir, I do not agree with the honourable member in this particular matter. I think when we find that in spite of our efforts we have failed to provide a sound piece of legislation, we should not necessarily get rid of the old legislation because it has cost us some time or some money. I am afraid if you pass it into law it will take a good deal more of public money and a good deal more of private money also. Therefore it is the duty of the legislature and it is the duty of the Government to pause, to seriously consider over the responsibility that they are undertaking in introducing this Bill which has been more than once criticized from the tenants' point of view, which has been more than once criticized from the zamindars' point of view. Taking everything into consideration, I am afraid, defective as the old Act was, it will be just as well to allow that to go on for a few years more. Although it is objectionable, at least we have become familiar with it. Last of all my submission is that the provisions of this Bill are to a layman so mysterious that it will be extremely difficult for him to understand it. I am afraid the honourable members of the Board of Revenue will have to start over again, giving new rulings on almost every section of the Bill, and it will take some time before these rulings are digested by the courts below. In the meantime they will vie with each other in committing blunder after blunder at the expense of the tenants and the zamindars alike. In view of the fact that there are as many imperfections in the Bill, is it proper that it should be thrust down the unwilling throats of the tenants and the zamindars who are outside the Council and who are completely helpless in the matter? With these words I leave it to the good sense of the Council whether they should pass or reject the Bill. I trust they will reject it.

Shri Sahib Lala Jagdish Prasad : I rise to make a few observations at this stage. I think it will be readily admitted that the landlord members generally did what they could in relation to this Bill. They

did not oppose its reference to the Select Committee; they served on the Select Committee and when the report of the committee was before the Council, they moved necessary amendments to the Bill. The fact that the landlord members did not oppose the concession of life-tenancy to the tenants, the fact that they entered into a compact with the swarajist members, the fact that they moved amendments to the Bill—all this shows that they did not want to have everything for themselves. They wanted certain concessions to be granted to the tenants, and they maintained a spirit of give and take. I think the Bill, as it has emerged from the Council, gives certain concessions to the landlords, whereas it concedes certain others to the tenants; in some respects, on the other hand, it is injurious to the interests of the landlords, while in others it is injurious to that of the tenants. On going carefully through the provisions of the Bill as emerged from the Council, I do not think that I should oppose its passage.

There is, however, one thing, which I cannot help mentioning and which has pained me most. There were some amendments which were made in the Bill, as the Council is aware, in the teeth of Government opposition, and which were carried either by the unanimous vote of the non-official members of the House or by a majority of them; but the Government sought to turn down those amendments, as I have no doubt that it is the Government who advised His Excellency the Governor to send a message to the Council embodying certain recommendations. I do not question the right of His Excellency in this respect. I admit that his action was constitutional. But, Sir, I submit that if certain decisions of the Council, either arrived at unanimously or by a majority of the non-official members, are thus to be turned down by the Government with the help of some of the non-official members, no doubt then it seems that our existence as representatives of the public is quite useless in this Council. I think that it was not a happy move on the part of the Government. When the Council has come to a decision, right or wrong, whether against the views of Government or in favour of them, that decision ought to be adhered to, and should not be set at naught, as has been done in the case of the present Bill. It is on account of this and having regard to the situation as a whole, that I think that I should not at the same time vote in favour of the passage of the Bill. It will be better if I abstain from voting. I will, therefore, abstain from voting when it comes to passing of the Bill.

Khan Bahadur Maulvi Fasih-ud-din: I wish to make a few brief observations in connexion with this debate. It goes without saying that the Bill in question has hit the zamindars very hard. In fact, it has reduced them to a position of utter helplessness and desperation, and at the same time, I must say, that it is not likely to prove to be a Magna Charta for the tenants also. It is certainly not an "open sesame" of Ali Baba or the wonderful lamp of Ala-ud-din in the matter of solution of agrarian problems in these provinces. It is, I am sorry to confess, distinctly guilty of having snatched away from the zamindars as much as 70 lakhs of acres of non-occupancy area by creating life tenancy. It is also morally guilty of breach of promise by annulling and setting aside all the contracts and agreements that were entered into between the landlords and the tenants under the provisions of a living law. It is also guilty of having taken away the non-occupancy area from us by one hand and of giving us by the other the authority to take as much land

[Khan Bahadur Maulvi Fasih-ud-din.]

as we want from the tenants, and thus it is guilty of setting the landlords and the tenants against each other, as if it were by ears. I am sure it tends to create a sort of everlasting enmity and heart-burning between the landlords and the tenants by means of sections 18, 40 and 80. It is for these reasons that I say that this Bill does not at all benefit any of the parties concerned. Mr. Gavin Jones has said that the Bill is objectionable, but he has advised us to see it through, for the simple reason that it has now come to a very advanced stage. Our friend, Rai Bahadur Babu Vikramajit Singh has said that we have spent about Rs. 50,000 of public money over this Bill and it behoves us to pass it. I know and I feel that, as the zamindar party happens to be in a minority this afternoon in the Council, the Bill will be passed and all the discussions that we are carrying on are more or less of an academic character. But, Sir, we have a conscience to keep and we have a duty to perform. We must, therefore, have our say in an important matter of this kind, and I say without fear of contradiction that cent. per cent. of the zamindars are thoroughly dissatisfied with the Bill and they will be more dissatisfied after today's result of the amendments that have been made. It is for this reason that I think that the Bill will remain rather as an undesirable memento of the work of this Council if it is passed. I feel, as Mr. Gavin Jones has foreshadowed, that the Bill will have to be amended within the next five years. But why pass a legislation which is going to be so ephemeral? There are, no doubt, indications that the Bill is not to have a long life, and if that be so, and if our conjecture is right, then we shall certainly not get the credit (at least we the members of this Council) for having passed such a short-lived Bill. I think that the Bill of 1901, which was passed by Sir Anthony MacDonnell, is in a way superior to the Bill that we are now passing. I do admit that this Bill reduces litigation to some extent. But, apart from this, the feelings that it tends to create between the landlord and his clientele the tenants, will last for a long time to come and nothing but this Bill will be responsible for these feelings. Litigation or no litigation, matters little, but the most important point about the relationship between the landlord and the tenant is that both of them should live together as good neighbours and that there should be mutual sympathy between the two, and the absence of such a sympathy produced by the provisions of the law is to be deprecated. With these few observations I say that I cannot be a consenting party to the passing of this Bill.

Pandit Govind Ballabh Pant : I have up to this time resisted the temptation of making any observations at this stage of our discussions over the Agra Tenancy Bill. But finding that such an important occasion should not be allowed to pass without giving very briefly an expression to some of the thoughts that are in my mind at this stage, I have ventured to stand up with your permission.

Ordinarily, when one reaches the consummation of his labours, when a passenger comes near the final stage, he feels a little relief and a little gratification. Honourable members of this House, those sitting in the cross benches, the Hon'ble the Finance Member who has been piloting this Bill right through, and his advisers, and my friends here, have taken great interest and bestowed much thought, energy, and ability in shaping the provisions of this Bill. I have no doubt that in the course of our deliberations in this

Council over this Bill we have all been actuated by one motive. It is difficult for anyone to say whether the judgement of the historian will be in favour of the Bill or against it. I do not intend to make a survey of the various clauses. We have had occasion to deal with them and to give expression to our views. So far as we are concerned, we had a further opportunity of criticizing the various provisions according to the light that we possess in our minute of dissent, which we appended to the report of the Select Committee. But it is necessary for me to state that, in spite of the improvements that have been made in the Bill, I do feel a bit sad even now and the reason I may just state. It was my desire that, whatever form the Bill might take, so far as the vital principles are concerned, we the non-official members should have made up among ourselves and introduced such proposals, by way of give and take, as might be acceptable to all of us. That was one of my wishes which I placed before my friends the day we entered this Council to discuss this Bill. It was a happy experience that up to a certain stage we all went together. Of course, there were disagreements here and there, but so far as some of the important provisions were concerned, we were able to agree on them. It was my wish that, whether the Bill went out in a perfect form or in an imperfect form, imperfect it must necessarily be as things in this world are, it must have the imprimatur of unanimous non-official opinion on it. I attach great importance to a spirit of harmony in legislative measures of this character. I feel that they can be made capable of yielding much better results when they have the consent of the different schools of thought in this House than they can have when they are forced upon those who have mostly to deal with the clauses for whom this Bill is meant; and it was my hope, to the very end that I would have the satisfaction of saying that, whether for better or for worse, the Bill goes out not only with our consent, not only with our approval, but with the approval of those whom we are desirous of serving as much as we are desirous of serving other classes of the community. It pains me that after all certain differences cropped up at the last stage and we were divided in the lobby, but I hope that in future we will cultivate a better spirit and that it will be possible for us to swim together, so that we may secure our destiny or if the catastrophe comes, we may even sink together. I hope this Bill will pave the way for greater unity. I may also inform the honourable members that when we came back to this Council to consider this Bill, to place our own services at the disposal of the Government and other non-official members of this House, we did not enter it in a political spirit as swarajists. But, looking at the vital interests that were at stake, looking at the vastness of the problems with which this Bill was to grapple, we felt that it was due by us, so long as we were members of this Council and so long as the interests of the landholders and the illiterate masses are concerned, to place our own limited capacity at the disposal of those who, though possessing better experience and having greater interests in the matter, might perhaps be pleased to utilize our services in this connexion. It was in this spirit that we came here, and it is therefore that we were not deterred, in considering this Bill, by any constitutional considerations or considerations of political character. We made it a rule, as we did on some other occasions, that the Council should, whenever any provisions are sent back to it, so far as

[Pandit Govind Ballabh Pant.]

individual members are concerned, adhere to the decision recorded previously, except when their previous attitude was the result of a compromise which has since fallen. We exercised some real restraint on ourselves, so that the merits of a question did not suffer in the course of the discussion because of any prejudices of a political character. We adopted this line and sacrificed our sentiment because of our regard for the humble man who is incapable of understanding the subtlety of constitutional law and whose condition is inconceivably deplorable. I may also inform honourable members that we adhered to our previous attitude when the Chief Court Bill came back for reconsideration. That was our attitude when the supplementary estimates relating to settlement and other matters were re-committed for the consideration of the House, and that is the consistent attitude we adopted on this occasion also. It is difficult to pronounce judgement on the various provisions of the Bill, but on one fact I have no doubt and I state it frankly for what it is worth. I feel that the Government has been actuated by the best of motives in putting forth this Bill. I will again abstain from freely giving vent to the strong opinion that I hold on the other matter which has cropped up in the course of the discussion on the Bill. My views on the various provisions are well-known and I have my differences with Government regarding them. My position, to which I have consistently adhered, is that it does not provide any effective remedy for the agrarian problem. I feel that it is lacking in the vital principles which should keep it alive. But, having read the message of His Excellency the Governor and having heard the statement made by the Hon'ble the Finance Member, I am persuaded to think that they would have gone further but for their consideration for the views of those who are directly affected by this Bill, and I trust that it will not be long before the principles of occupancy or heredity, without which I feel no agrarian legislation can be of premanent utility, will be introduced in this measure.

I think men are always doubtful and suspicious about the developments that may follow on the introduction of a new scheme. We with our limited vision cannot say what will be the ultimate effect of this Bill. I am conscious of the likely effects to which a reference has been made by my friend, Mr. Ismail. I share some of his apprehensions, but with all that I think there is another aspect of the problem to which a reference has not been made. I will not refer to that, as I do not consider it necessary to do so. The appeal that we made while closing our minute of dissent is embodied in clause 17. I am making these remarks in the same spirit. My friends, the zamindar members, I know, fully realize that the interests of their tenants are identical with theirs. With a full knowledge of that fact they still feel that there are many things in this Bill which might have been left alone. But I will request them to bear one fact in mind. After all, in the efflux of time as things proceed we have to move on, we have to see to it that the entire community is brought more or less nearer and closer and classes are so harmoniously related that there is little occasion for any clash among them. It is the privilege and it

should be the effort of every one of us wherever he may be situated, to win the sympathy, the affection and the support of him who occupies a lower status than himself, and I hope that this opinion is shared by every one of my zamindar friends who is sitting here. I have full confidence that they have regard for the welfare of the country. I should not be surprised if they feel dejected at the present moment, not only because it affects their interests, not only because they are perhaps being asked to forego what they have been enjoying so far, but also because of the manner in which the Bill has been referred back. They can well imagine what should be my feelings on that point and to show how preposterous the entire system is, I would just bring to their notice what I have been observing for some days. Every day that this Bill was being discussed I was struck by the attitude of the Hon'ble Ministers. It is hard to imagine a Government in which the members of the Government refuse to support a measure emanating from the Government. It is a curious and uncommon experience which I have had from day to day to see that the Hon'ble Ministers declined to support any of those proposals in which the Government member in charge of the Bill and we agreed. If they ever extended their support it was only when the Government member was against us and opposed our proposals. This is so ridiculous, yet it is not unconstitutional. We see here the Government in which some of its members who are closely connected with the administration of the province, and who are supposed to constitute the Local Government discountenancing of a Government measure affecting tens of millions of people of this province, and openly, frankly, and candidly on the floor of this House refusing to vote for it. This is preposterous and against the principles of sound constitutional theory which they will please bear in mind. I have no doubt that they recollect that the Hon'ble Ministers, who should ordinarily be considered to be representing non-official public opinion in this House, have recorded their votes with the other members of Government on various occasions on very important matters, on which the entire non-official opinion in this House and outside was unanimous.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : Is the honourable member discussing the provisions of the Bill or criticizing the attitude of the Hon'ble Ministers ?

Hon'ble the President : The honourable member is discussing the situation of the party.

Pandit Govind Ballabh Pant : I was driving at this that we have not got even a shadow of responsible Government, but only a travesty of it, and it is no wonder to me that the well-considered opinions of this House have been disowned by the Head of the Executive Government and the legislature in this province and have been referred back for reconsideration. But I beg to assure honourable members that the remedy does not lie in a spirit of resentment or cussedness over this particular piece of legislation with which we have to deal. The disease is of a deeper character. The poison lies deeper in the system. If we want to solve this problem, it is necessary for us that we should take stock of the situation, see where the canker lies and purify the body politic as well as the body of Indians whom we are here to protect, to safeguard, and to represent. I hope the experience will not be lost upon

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them and they will make up their minds and form an unwavering determination to have that system of responsible Government in this province which alone can make the executive amenable to the control of the legislature and make it worth one's while, without compromising one's self-respect and dignity, to work in this House.

Hon'ble Sir Sam O'Donnell : This is now time that the debate be closed.

Hon'ble the President : There are many honourable members who want to speak and as the Bill is of a momentous nature they should be allowed to have their say.

Khan Bahadur Mr. Muhammad Aslam Saifi : There is no wonder if the zamindars are suffering today from an attack of the blues. They are feeling so, I realize, because they have been beaten regarding some of the questions which are most vital to their interests. The estate of their mind will perhaps be better described if I recite a famous couplet of Ghalib :—

ہوئے گل - نالہ دل - درد و چراغ محفل • جو تری بزم سے نکلا سو پریشان نکلا

The scent of the rose, the cry from the heart and even the smoke of her drawing-room lamp, whichever left her side, left puzzled.

But the question is why the zamindar should feel puzzled today. Is it because he thought he was the spoilt child of the Government? If he thinks that and if he realizes today that he has been disillusioned, I think it is to his advantage. Let him today get out of that childhood and realize his manhood. If he is beaten today, there is nothing remarkable in it and I will advise him to take his defeat like a man and to be a sportsman. If you have fought for every inch of the ground and if still you are beaten, it does not matter. You have done your duty and you have stood by your right and have fought for everything which, you thought, would affect your interests vitally.

Well, Sir, I must now proceed to the consideration of the Bill itself. Sir, it is evident that agriculture is the main industry of India and it is perhaps of greater importance to my province. Therefore, it is but in the natural order of things that the Government should have taken it upon themselves to improve the condition of tenants. Having brought the Oudh Rent Act on the Statute Book it was but natural that another piece of legislation on the same lines should have been introduced in this House in regard to the Agra tenants. What is the general condition of tenants whose lot is tried to be improved? Sir, the British rule has been in existence in India for the last 169 years, and it will be borne out not only by Indian members of this House but by the European members as well, because the latter know it as well as anybody else, that the condition of the tenant is that he is living in a *kachcha* house having mud walls and a thatched roof. He has got a few copper utensils, and his bullocks and himself often share the same room. That is the condition of the tenant today. Can the zamindar be made responsible for it? Do we not realize the vastness of the difficulties that are required to be surmounted? I do not think his lot can be improved unless and until the Government and the zamindar join together. The object of this Bill is to improve his condition. Well,

Sir, what has happened since the Bill was introduced in the Council? Some of the honourable members have remarked that if anyone was to oppose the passage of this Bill today, he ought to have stood up and opposed it at its introduction. But the Bill was welcomed by the zamindar members. Is there any one in this House who is prepared to say that the zamindar is a narrow-minded, is a mean-spirited, or an ungenerous person who is opposed to the interests of his tenants? I challenge anyone to make that remark. The most important part of the Bill is the principle of life tenancy and that has been whole-heartedly conceded by the zamindars. Well, Sir, having set that point at rest, it was necessary that it should be supported by various other provisions in detail. Some of the points on which the zamindar members of this House concentrated are fully known to the House. I may recite the question of ejectment for non-payment of arrears; the question of seven-year leases; the question of ejectment suits; the question of the acquisition of further rights in *sir*, and last though not least, the question of the roster system. They have made known their views to the House, and if the decision of the House has gone against them, either it is no fault of theirs or I think it is entirely their own fault.

Hon'ble the President: The House is on the tip toe of expectancy to learn at once whether the honourable member is opposing or supporting the motion.

Khan Bahadur Mr. Muhammad Aslam Saifi: I think that the trend of my speech would have made it quite clear. But since the question has emanated from you, Sir, I may say that I should advise to accept the Bill at this stage and do so with a good grace.

Pandit Baijnath Misra: In the case of a measure like this which affects very many interests, it is difficult to secure satisfaction for all. In such cases legislation goes always by compromise, and I think that there are various provisions of the Bill in which there has been a conflict between the zamindars' and tenants' interests and in connexion with which the Council has proceeded by compromise. Now that the Council has come to the end of its labours and the Bill is about to be passed, the question to be considered is whether the chief objects of the Bill have been achieved or not. No one should be led away by the idea that, as the particular provisions which he had at heart were not passed, therefore the Bill is not worth having. The right view to take is whether the chief object of the Bill has been achieved or not. Now what were the objects with which the Bill was introduced or with which the Council allowed the Bill to be introduced? One of the chief objects was to secure fixity of tenure for the tenants. From the tenants' point of view all that they wanted has not been achieved. Some security of tenure has been gained, there is no doubt, but all that the tenants wanted has not been done. The tenants certainly wanted the principle of heredity to be introduced. If I remember the resolutions of the conference which was held, perhaps at Allahabad, I mean the Tenants' Conference, they wanted not only the principle of heredity to be recognized, but they wanted occupancy rights—rather they went further. They said that their rights should not only be made heritable but transferable also, that is, they wanted some sort of sub-proprietorship.

An honourable member: "They wanted sub-zamindari"

Pandit Baijnath Misra : Certainly, as my friend remarks, they wanted a sort of sub-zamindari. But in a Council constituted as it is they should not imagine to have it and they have not got it. But the tenants should not be dissatisfied, because what they have got by the Bill they had not before. Up till now, in the course of 12 years during which they cultivated a land they could be ejected at any moment. They were, if I am not wrong in saying so, a sort of slaves. But now they have got some fixity of tenure.

A Voice : " No ".

Pandit Baijnath Misra : They will not be quite masters of their holdings, as my friend remarks, because as we have just heard from Khan Bahadur Mr Muhammad Ismail that whenever the tenant dies the question of rack-renting and the question of *nazrana* will come up between the zamindar and the tenant, and to that extent the Bill is unsatisfactory from the view-point of tenants. Of course, if the question of heredity could be introduced that difficulty would have been removed, but then that was not possible. When the Bill was being drafted by the committee appointed by the Government this question was really considered and it was found that it was not possible to go further than what the Bill had gone to. Therefore the tenants should not remain dissatisfied with what they have got. As for the zamindars' provisions have been made to facilitate the realization of rent. None of the zamindar members here would say, rather can say, that the increased facilities that they are going to have now they had under the present Act. I know that the zamindar members are dissatisfied with the little that they have got. They want to get much more than what is provided in the Bill, but, as I remarked in the beginning, every legislation is a sort of compromise. You cannot have all that you want to have all at once. There is another object to be considered. When the Bill was being drafted opportunity was taken to introduce into it provisions to facilitate cultivation. And when the Bill was being sent to the Select Committee the Council approved of that idea. Today those provisions have been passed by the Council. The zamindar has got the right to acquire more *sur* land. They could not have that under the present Act. By exchange of land facility has been provided for cultivation both for zamindars and the tenants. This was one of the ideas to be achieved when the Bill was introduced in Council. I think that object too has been achieved. Now there have been clauses in the Bill that have not been approved either by the one side or by the other, but as remarked by Mr. Saifi, that is a question of mere details, and for the sake of trifling details the Bill should not be thrown out. I, therefore, give my hearty support to the motion that the Bill be passed.

Hon'ble the President : As I see there are a number of members still wishing to take part, and as the hour is late, I adjourn the Council till tomorrow.

LEGISLATIVE COUNCIL, UNITED PROVINCES OF AGRA AND OUDH.

Saturday, July 31, 1926.

THE Council met at Sherwood House, Naini Tal, at 11 a.m.
Hon'ble Rai Bahadur Lala Sita Ram in the Chair.

PRESENT:

(82).

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.
Mr. R. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Halloway.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. B. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Babu Narayan Prasad Arora.
Babu Sangum Lal.
Babu Mohan Lal Sakana.
Babu Jai Narayan Chaudhri.
Thakur Manjit Singh Kathor.
Rai Jagdish Prasad Sahib.
Chaudhri Jaswant Singh.
Pandit Nanak Chand.
Lala Babu Lal.
Thakur Shiva Narayan Singh.
Rai Bahadur Babu Ram Nath Bhargava.
Rai Amba Prasad Sahib.
Rai Bahadur Pandit Kharagjit Misra.
Raja Suryopal Singh.
Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.

Pandit Brijnandan Prasad Misra.
Pandit Jhanni Lal Pande.
Raja Narayan Pratap Singh.
Pandit Sri Krishna Dutt Paliwal.
Pandit Yajna Narayan Uadhy.
Rai Sahib Babu Dip Narayan Roy.
Rai Bahadur Thakur Hanuman Singh.
2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
Bhaya Hanumat Prasad Singh.
Pandit Buijoath Misra.
Pandit Govind Ballabh Pant.
Babu Ram Chandra Sinha.
Rai Bahadur Thakur Masabal Singh.
Babu Sita Ram.
Khan Bahadur Mr. Muhammad Aslam Sa'id.
Maulvi Zabur-ud-din.
Rao Sahib Abdul Hamood Khan.
Nawabzada Muhammad Ejaz Ali Khan.
Khan Bahadur Chaudhri Amir Hasan Khan.
Mr. Muhammad Ismail Ali Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafiz Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Mr. Muhammad Ismail.
Dr. Shafa'at Ahmad Khan.
Khan Bahadur Sayid Muhammad Ashiq Hussain.
Khan Bahadur Maulvi Fasib-ud-din.
Khan Bahadur Maulvi Muhammad Fazlur-Rahman Khan.
Khan Bahadur Hakim Mahtub Ali Khan.
Khan Bahadur Mr. Ashiq Hussain Mirza.
Khan Bahadur Munshi Siddiq Ahmad.
Qazi Habib Ashraf.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Rai Bahadur Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Jagannath Baksh Singh.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.
Rai Bahadur Babu Vikramajit Singh.

QUESTIONS AND ANSWERS.

STARRED QUESTIONS.

Arti AT SANKHANI, BULANDSHAHR.

* 1. **Pandit Nanak Chand :** (a) Will the Government be pleased to state if any dispute lately occurred over the performance of *arti* in a temple at Sankhani, district Bulandshahr, and if there is any mosque situated in the vicinity of the temple and the approximate distance between the mosque and the temple?

(b) Is it a fact that the temple is outside the *abadi*? Has it been desecrated?

(c) What steps, if any, have been taken to bring the offenders to book?

(d) What steps, if any, have been taken to ensure to the Hindus the performance of their religious rites at the temple?

(e) Is it true that the population of Muslims considerably exceeds that of the Hindus in the said village?

Hon'ble Sir Sam O'Donnell : (a) Yes. There are several mosques near the temple at distances varying from 20 to 50 yards.

(b) It is on the outskirts of the *abadi*. The allegations of desecration broke down.

(c) The alleged offenders were put on their trial and acquitted.

(d) No special steps are necessary. It is understood that the differences are likely to be settled amicably.

(e) The Muslims slightly exceed the Hindus in number.

* 2. **Pandit Nanak Chand :** [*Postponed at the request of the Government till the meeting of the Council on August 7, 1926.*]

NOMINATIONS FOR THE NAINI TAL MUNICIPALITY.

* 3. **Pandit Nanak Chand :** (a) Will the Government be pleased to state how many members does it propose to nominate for the Naini Tal municipal board in accordance with the new constitution of the board?

(b) Is it intended to nominate a member from the depressed classes? If not, why?

(c) Is it a fact that the number of members representing the proprietors at Mussoorie in the municipal board is six?

(d) How is it that the number of proprietors' representatives has been reduced in Naini Tal from two to one only? Do Government intend to raise the number? If so, to what number?

Hon'ble Nawab Muhammad Yusuf : (a) Four.

(b) No.

(c) Yes.

(d) Their voting strength is small as compared with that under the category of petty holders whose representation has been increased; no further change is contemplated.

Pandit Brijnandan Prasad Misra : Why has this nomination been kept at four, whereas in the case of other boards it is two?

Hon'ble Nawab Muhammad Yusuf: It is an exceptional case.

Pandit Brijnandan Prasad Misra: What are those exceptional grounds?

Hon'ble Nawab Muhammad Yusuf: The board's constitution is exceptional. That is the reason.

Pandit Nanak Chand: Will the Hon'ble Minister state why he proposed not to nominate a member of the depressed classes to this board?

Hon'ble Nawab Muhammad Yusuf: The interest of the depressed classes is not sufficiently strong there.

Pandit Nanak Chand: What is their numerical strength?

Hon'ble Nawab Muhammad Yusuf: I am not aware.

Pandit Nanak Chand: Then how did Government come to know that their interest is not strong there?

Hon'ble Nawab Muhammad Yusuf: It is obvious.

Pandit Nanak Chand: From what facts is it obvious?

Hon'ble Nawab Muhammad Yusuf: Generally we feel that there are not many members of the depressed classes residing there.

Mr. H. David: Is there any representation of the Indian Christians?

Hon'ble Nawab Muhammad Yusuf: No.

Mr. H. David: How do you class them—depressed classes or oppressed classes?

(No reply.)

Pandit Brijnandan Prasad Misra: Was any representation received from the depressed classes in Naini Tal?

Hon'ble Nawab Muhammad Yusuf: No.

THE AGRA TENANCY BILL.

Babu Sita Ram: I had no intention to take part in the debate on this question, because it is useless to tire the Council by repeating oft-repeated arguments. But the occasion is such, and the indulgence you have shown, Sir, to us is so great, that I am also tempted to make a few observations regarding this important measure. I must say at the outset that we do not regard this legislation as a satisfactory measure. We regard it only as a palliative measure to remove the existing defects which press so hard upon the Government. No agrarian legislation can be said to meet the needs of this province so long as it does not freely confer the right of succession to statutory tenants, because it is only then that a tenant will be able to feel that he is also a free man and he and his heirs cannot be subjected to the tyranny or oppression of those under whom he happens to live. But as there is a great difficulty at present to the tenants of these provinces and the Government had to resort to enact an executive measure for the protection of tenants to give them relief from ejectments, therefore this gift of the right of life-tenancy will of course remove the difficulty of those tenants for some time and there will not be such frequent ejectments as there were in the last few years. So far as good landlords are concerned no law is necessary for them, and they need fear no law,

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because my experience is that good landlords do not eject their tenants. It is to prevent abuses which result from bad legislation that laws are enacted or modified, and the right of ejectment was a power which could be abused by the landlords, therefore this measure has been liked to some extent by those persons who want to see that tenants are not subjected to unnecessary hardships. Therefore, in my opinion, there will be not the least anxiety in the minds of good landlords. They will not be at all afraid of this measure, because nothing will be taken away from them. My opinion is that good landlords will also desire in their heart of hearts that the power which is utilized by bad landlords should be checked and not be allowed to remain in their hands. While I was attentively listening to the speech of my honourable friend Rao Sahib Abdul Hameed Khan I was very forcibly reminded of a Hindi couplet which was probably meant for another occasion. The couplet runs thus:—

کیا پردیسی کی پریت پھوس کا تاپنا * مینے دیا ہی کلیجہ چپر تھوں نہیں آپنا

It exactly applies to the situation which was depicted by my friends the landlords. They candidly confessed that they were for the Government and that they did not care for the interests of their own countrymen, of their own tenantry, and it was only yesterday or the day before when they received the message of His Excellency the Governor that they realized the helplessness of their position and then they showed a certain amount of resentment. My idea is that this resentment will not be temporary; it will open their eyes; it will show to them that it is best that they should look to the interests of their own country and their own countrymen, and that they should not keep themselves, as they candidly confessed that they kept themselves till now, slaves of a foreign Government. We Indians are all in the same category. A person who is a landlord today may by extravagance be reduced to the position of a tenant and we see every year property having a revenue of Rs. 4 lakhs a year being sold up. What becomes of the position of these persons? They are reduced to the position of tenants or ex-proprietary tenants. And a tenant may amass wealth and may become a landlord tomorrow. We are concerned to see what should be the relations between one class and another and our efforts should be turned in that direction only. The landlords while considering this measure should keep themselves in a detached position and should not identify themselves with the position either of landlords or tenants. So far as the swaraj party is concerned, my idea is that there is no man here who can call himself a tenant. Many of us are zamindars and our position with regards to this legislation is this: We are not afraid of this legislation because our position is that we should so regulate the relations between one class and another as not to allow any friction or any occasion for it to override the right of others. That is the only way in which we can bring about the ideal of freedom in this country. Every community should so behave towards another community that there should be the least friction between the two. The supporters of the case of the tenants in this Council are mostly the lawyers. For supporting the cause of the tenants we were twitted with the remark that if

the landlords take *nazrana*, we also take *shukrana*. The supporters of the landlord class have also been legal luminaries, and my submission is that these gentlemen want to keep *nazrana* and *shukrana* both for themselves. Well, Sir, we are asked what is the line of action we adopt in this Council. Our views and our professions can be gathered by the action which we take in this Council. There was another remark which fell from another honourable gentleman, and that is that the Hon'ble the Finance Member thanked the leader of our party for lending support to this Bill. Of course, our position has always been clear. We do not stand for any particular class of Indian society. We stand for those principles which should have the effect of bringing about the idea of freedom in this country. That is our mission and that is our purpose. We lend our support to the Government in any measure which has that effect. We are not ashamed of taking up that course. We tell the Government frankly that if they succeed with this measure we will not be satisfied with empty thanks that the Government may give us. We want substantial measures of reform, and in return for our services we hope that the Government will come forward in a very short time with a measure that will confer occupancy rights on the statutory tenants and their heirs in these provinces. If the Government will come out with such a measure we will think that our services have been well repaid.

Now I wish to tell my zamindar friends that they have served the Government so long without much result, and I hope that the resentment which they showed will not be a temporary resentment. I hope that hereafter they will direct their energies for the uplift of their country. The Government stands here only for the purpose of maintaining law and order. So far as my reading of the situation goes, there is no other purpose for the Government in this land. I will ask my zamindar friends to so regulate their relations with other members of the community that there will be no necessity for the foreign Government to maintain law and order in our land. Our relations should be so regulated that there should be no necessity for the foreign rulers to regulate the relations between us. It has been remarked that we are the enemies of law and order. Of course

Hon'ble the President: The honourable member is going into irrelevant questions.

Babu Sita Ram : It is an irony of fate that the Government is now going to pass a measure with the help of those who have been regarded as the enemies of law and order, while those who have been the best allies of the Government and who were in the most secret counsels of the Government are not helping that Government in a measure like this.

Khan Bahadur Hafiz Hidayat Husain : I do not propose to avail myself of this opportunity to make a political speech. I only want to address a few words to my brethren zamindars, the Government and the swarajists, to ask them to weigh dispassionately what the effect of this legislation will be on the peace and the good government of the land ; what its effect will be on the relations between the Government and the zamindars ; what its effect will be on the relations between the tenants and the zamindars. Sir, in a feeling of depression and despondency yesterday some of the members of the zamindar party

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showed a feeling of lukewarmness towards this Bill. I trust that reflection over night has assuaged those feelings. I hope that what I submit now will be taken in the light in which it deserves to be taken, and I hope the House will, before it gives its decision, consider calmly whether this enactment is one which should find a place in the Statute Book. The third reading of a Bill gives one an opportunity to bring into review all the factors that go to determine whether the proposed legislation will contribute materially to the advancement and happiness of those for whom it is meant. This agrarian Bill will be judged from the standpoints of all those whom it concerns, that is, the three partners in the land, namely, the Government, the landlords and the tenants. The interests of all these three partners must be permanently secured in the Bill as far as possible before this Bill can be said to have secured any measure of success. The interest of the Government is nothing more in the land than fiscal; it is interested only in revenue, and as long as it gets its share of the produce of the soil in the shape of money and as long as an ever increasing share of that produce is guaranteed to it, so long its interests are secure. What is the interest of the tenant? To put it in modern phraseology, it is to secure for them a fair rental and the security of tenure. As long as these two purposes are attained, the interest of the tenant in the land is quite secure. But, Sir, the interest of a landlord is quite distinct and separate from the interests of both the Government and the tenant. The interest of either and both of them may be temporary, but the interest of the landlord is permanent. He is, as has often been said, the greatest stake-holder in the country. He is the natural leader of men. He is the ultimate reversioner of land. Now the question is: Does this piece of legislation satisfy this great stake-holder and this natural leader in the country? If it does not, then my submission is that it does not secure his interest and from his point of view should not find a place on the Statute Book. I hope the Government will take stock of what has taken place in this full month of July from 1st to 31st, and will review its position as regards the landlords. I ask, Sir, if the support of those who have no interest in the Bill is any recommendation for its acceptance? My answer is an emphatic "no". The support of those persons who have got interest in the land should really count in a measure like the present. I have already stated that the largest stake-holder is the landlord. I ask then, what has been the feeling of that stake-holder ever since the Bill came on the anvil and has been under discussion? I say it very frankly that the feeling of the landlords, both outside and inside the Council, has been that the Government has shown consistent lack of sympathy and sometimes even antipathy to the interests of the landlords. I regret to have to say this, but in this Council, I submit, nothing should be left unsaid which may keep the Government in the dark, and hence it is my painful duty to voice the feelings of the landlords, both inside and outside the Council, in regard to this Bill. The zamindars feel that they have been sacrificed at the altar of the present tension in the country which having strengthened position of the Government has gone far in the determination of their fate. And here, Sir, I venture to voice the feeling of disappointment that we have all felt to our great regret and sorrow at the attitude taken by the distinguished leader of the House. We expected and we felt justified

in expecting every help and co-operation from the Hon'ble Sir Sam O'Donnell, but at every turn we were disappointed. The disappointment, Sir, is all the more keen, the grief is all the more poignant, coming as it does at the psychological moment of his elevation to the *gaddi* of these provinces. All that I can say at this minute is this :

ہوئی جن سے توقع خستگی میں داد پانے کی
وہ ہم سے بھی زیادہ کشتہ نیخ ستم نکلے

The future is in the lap of the gods; but it will be a bold man, Sir, who will prophesy for the zamindar party in this House in future. The attitude of the Government has been the disintegrating factor for the zamindar party both for this Council and for the Councils to come. I will not enter into the broader question of Reforms as some of my friends have done. All that I will say is that this Council, not unlike other Councils and the Assembly, can be likened to so many baby parliaments, no better than mere ventilating channels which no Englishman would for a minute tolerate in his country.

I will now briefly discuss the Bill on its merits. This Bill was blessed by the leader of the swarajist party yesterday. I am not surprised at it, considering that the Government has been all but too eager to come to terms with them and to accept the points they had gained throughout the discussions. It was refreshing to hear from the distinguished leader of the swarajist party yesterday a homily on the *bona fides* of the Government. This rapprochement between Government and the opposition, coming immediately after the Nagpur speech of His Excellency the Viceroy in which His Excellency extolled the virtue of exchange of cigarettes between the member of the Government and the leader of the opposition in the lobby of the House, has come none too soon. For that reason probably it has begun inside the House rather than in the lobby. At any rate, this rapprochement will, I hope, fructify itself into an unstinted support of the Government and whole-hearted co-operation in immediate future by the swarajists. It is all the more welcome to us for the simple reason that we who have always been labelled by the swarajist as the Government men find persons who were directly in opposition to the Government and who came in with professions of ending or mending that Government have stood side by side with that same incorrigible Government sharing their views and their opinions. But who was it that said one word against the *bona fides* of the Government? Nobody in our party has for a minute impugned the *bona fides* of the Government. What we have said is that the policy of the Government has been one of consistent lack of sympathy with the zamindars. We have not said a word to impute *mala fides* to the Government. If the Government did not support us in those of our amendments which we thought were calculated to contribute to the welfare and the advancement of the zamindar community, it was not because that we challenged the *bona fides* of Government but because we ascribed it to a piece of their policy. But what about the swarajists themselves, who claim to advance the interests of the country as a whole, of all the parties in the country.

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Has there been one motion emanating from their benches which would materially advance the welfare and interests of the zamindar party? Profession is one thing and practice is another; one molecule of practice is better than one ton of profession. If you profess to bring all parties together and bring happiness to this country, why this indifference to the interests of the zamindar community? This supine callousness has throughout these discussions remained to me a mystery.

There were four provisions in the Bill, Sir, which were to the advantage of the zamindars and which to our misfortune now militate against their interests. The first provision was about *sir*, the second was about acquisition of land under section 40, the third was about the roster year and the fourth was about the speedy realization of rent under sections 80 and 81. These were the provisions which the zamindar thought were an improvement on the old Tenancy Bill. But what is the position now? I will take the acquisition of land and the roster year first. These were passed on the basis of a compromise that was made between the swarajists and the zamindars. I will not enter into the history of that compromise here. This compromise was arrived at as all compromises are arrived on the principle of give and take. This world, Sir, is a world of comparisons, compensations and compromises. But if I were to compare the gain with the loss, the net result to my mind is that in securing the compromise the sacrifices that we made remain, but the compensations are gone. That is the situation. I will amplify what I say. Take section 40. With regard to this, the position is that the discretionary power of the Collector was taken away when the land was acquired for the landlord's own cultivation. But now the Collector's power of discretion has been restored. Previously the words were:— "The Collector shall, if he is satisfied, acquire the land"; now the words are:—"The Collector may if he is satisfied acquire the land." Previously occupancy rights could have been acquired by the zamindars for various purposes, but now they can only be acquired for one purpose. In a letter that appeared in the *Leader* of 13th or 14th of July, written by the leader of the swaraj party in this Council, it has been stated that the limitations of acquisition of this class of land were so many, the restrictions were such that even the Oudh landlords with all their money and resources have not been able to acquire any appreciable portion of this class of land for the purpose of farming on improved lines. This being the condition in Oudh, how could we poor zamindars of the Agra Province, 86 per cent. of whom pay land revenue ranging from Rs. 5 to Rs. 100, be expected to acquire one single inch of occupancy land for improved cultivation? Then the amount of compensation which previously used to be the maximum is now the minimum. This is how we have fared with regard to one section, that of acquisition of land. With regard to the roster year, in this too we entered into a compromise; we made sacrifices for securing that compromise, and we got some, advantages. Now the advantages have gone, while the sacrifices remain. We increased the term for the roster year from 13 to 20 years under the compromise and we removed the discretion of the Collector under section 40, but the whole thing has now been nullified and the period in the roster system has been raised from 13 to 20 years, thus making the whole system abortive.

Then I come to the other two clauses, *sir* and the speedy realization of rent, under sections 80 and 81. I was responsible for moving these two amendments, and, despite the opposition of the Government and the swarajists, these two amendments were carried. But here I stand today a disappointed man, having lost both these amendments yesterday. *Sir* is absolutely necessary for the small landholders and, as I said before, there are 86 per cent. of small landholders in this province. Now this small landholder is denied the privilege of having any *sir* for his cultivation. We lost what we had gained because our party has dwindled, and there was no time to summon the party because the dilatory motion was flung at us.

Then with regard to speedy realization of rent, when the clauses came before the Council it reduced time from six months to three months. It has now gone back to six months again by a small majority, still by a majority. These are the four points which I submitted were of some benefit, of some advantage, to the landlords; but those advantages have disappeared. Now proceed further and examine our loss in what we possessed before. Unfortunately I was again responsible for the two motions relating to statutory tenancy and seven-year leases. I will very briefly deal with statutory tenancy first. I am afraid I did not find favour with my own party when I moved the amendment for the deletion of the clause conferring statutory rights on non-occupancy tenants. And why? Because eloquent and fervid appeals were made to the generosity and magnanimity of the zamindars to respond to the call of the times and grant statutory rights. After all, the zamindars have traditions behind them and they could not but respond to these appeals to their generosity and magnanimity. I regret I did not agree with this from the very beginning. *Sir*, permit me to indulge in some egotism at this stage, permit me to cite from my speech as to what I said regarding this grant of statutory rights when the Agra Tenancy Bill was being referred to the select committee. I read it here simply because the Hon'ble the Finance Member remarked when I moved this amendment that I did not say a single word in opposition to the creation of this right in my speech on that occasion. But I said then:—"The existing provisions of law regarding non-occupancy tenure ensure to the landlord his rights as absolute owner of the land; secondly, they leave with the landlord enough land for those persons who had none before and are relegated to cultivation; and, thirdly, they also assure to the landlord a little extra income. Therefore, I am afraid I cannot bless these provisions, for they bid fair to defeat the very object for which they are sought to be enacted. I regard the conferment of statutory tenancy as repugnant to the theory of ownership of the soil. Then I regard it as unnecessary, for nearly 77 per cent. of the tenants in the Agra Province do even now enjoy occupancy rights as against 2 per cent. in Oudh, and lastly I regard it as most harmful to the petty zamindars constituting 86 per cent. of our proprietary body." I adhere to every word of what I said then. I am pleased to find that yesterday voices were repeatedly raised in support of what I said on the 29th March, 1926, although when I moved the motion I found myself in the disconsolate minority of five in the Council.

With regard to the seven-year leases, figures are forthcoming to show that the zamindars have lost nearly 2½ crores of rupees over these seven-year leases. I ask with all this loss, with their position having

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been shaken to its foundation, is this Bill worth going into the Statute Book from their point of view? I give no opinion and I give no advice, but I leave the House to judge whether the rights of the zamindar have not been trampled down under this Bill, and whether it is calculated to advance their interests in this province in which he has got the largest stake, in which he is labelled as the natural leader of men, and which in his turn he loves so well.

Babu Nemi Saran : I had no mind to speak at this stage of the Bill, but the speech which has just preceded me incited me to speak.

At the very beginning I may say that I do belong to the same order to which my honourable friend who has just preceded me professes himself to belong. But I do think that my duties in the House do require me to leave the garb of that order and to look at things which materially affect the welfare of the country from the point of view of a politician and of one who has got the welfare of the country at heart. I can assure the House that had there been any member in this House who had been exclusively a tenant, perhaps he might have told a different tale and he might have imputed different motives to the swaraj party and the Government in bringing this Bill on the Statute Book.

The position of the swaraj party was certainly very critical, and it was very doubtful for us when we began this Bill as to how we shall be able to pilot it in our party. But fortunately by the tact and ability of our leader we have been able to go through it with harmony amongst us. We have tried to reconcile the two conflicting interests of the zamindars and tenants as far as we could. We tried to enter into a pact with the zamindars, giving them and taking from them as far as we could. If the pact had been broken, if certain disadvantages had arisen out of the pact, then we are not to be blamed for it. Our leader made it clear that we were prepared to stick by the pact to the last, but it was on account of the wish of the zamindar party that we went out of it.

My honourable friend the Khan Bahadur has very honourably said that the zamindars are the natural leaders of men, and that they form that community which has got the greatest stake in the country. I quite appreciate his point of view. But may I ask, is the welfare of those illiterate and dumb millions, who are not represented in the House by a single member, to be sacrificed at the altar of the pleasure of these natural leaders of men? May I ask:—"Has the Government not tried their level best to meet their wishes as far as they could, as is suggested by Khan Bahadur Hafiz Hidayat Husain"? May I also point out that our resolutions and amendments regarding those points which went to secure more fixity of tenure than what the Government has given were not opposed by the Government on the mere basis of pleasing or at least not offending the landlords? May I know whether the Government has conceded to the wishes of this party, have they embodied in this Bill any amendment which has emanated from these benches? The position is that our zamindar friends have been, and I think to a certain extent rightly, displeased by the attitude of the Government because their vital interests were concerned therein. There have been many actions of the Government which have been constitutionally much worse

than what my honourable friend has complained of. But because those matters did not concern the vital interests of the landlord party, they never cared a fig for them. But now, Sir, when that very constitutional practice has been observed by Government for a cause which I can say is a noble cause, for the protection of the unprotected tenantry, then the zamindar members come down upon the head of the Government and accuse them of many things which they might not have done had that very constitutional practice been followed for any other thing or for any other cause. My honourable friend has said that this Bill was blessed by my honourable leader Pandit Govind Ballabh Pant. I had listened to his speech carefully yesterday, but I never heard that he ever blessed the Bill as it stands. I can very well assure honourable members on the cross-benches that we are as dissatisfied with the Bill as they are. The Bill does not incorporate those amendments and those clauses which we wanted to be there in order to safeguard the interests of the tenants; but still we think that it is, as my honourable friend Babu Sita Ram has said, a palliative measure. It is very difficult to legislate on a matter like this in which the interests of the majority party of a House are concerned. It is very difficult also for the Government to pilot through a House a Bill which might please all. But, Sir, after all, may I ask honourable zamindar members whether it is or it is not a fact that the Bill as it now stands is a Bill which concedes certain rights which they did not possess till now, and it also does concede to tenants some rights or rather some necessary safeguards against bad landlords. Sir, the right which is given to the zamindar under section 81 of the speedy realization of rents is one, I think, which was deliberately rejected as pernicious when the Bill of 1901 was passed. But it has been incorporated in this Bill because zamindar members wished it. Is it or is it not a fact that the right of *sir* has been extended to an extent which no zamindar could have ever got or could have dreamt of under the present Act? With these concessions and other concessions which are minor ones, and I need not enumerate them here, how does it lie in their mouth to say that this is a Bill which they do not want as it sacrifices their interest? I want only to say one thing in this connexion and to show that what the zamindars say as trampling down their rights is not so. There is the question of statutory tenancy. We all know that by introducing this tenure we have taken away from them the right which they loved most, and that is the accrual of occupancy rights by prescription.

Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan : Give them that right.

Babu Nemi Saran : We all know that within the last 25 years 13 per cent. of the total area did become occupancy area under this very clause which we have now taken out of the Bill. Then, is it unreasonable to expect that had that very clause remained in the Bill, within the next 25 or 30 years the area on which we are now conferring statutory tenancy would have become the occupancy area? As far as I think the statutory tenancy as it stands is a most defective measure, and I think the tenants would not like it, and I would have liked to throw out this Bill but for the assurance which His Excellency the Governor has given in his message that, although it was his wish and the Government's wish

[Babu Nemi Saran.]

I hope, Sir, that that assurance will be given effect to as soon as the Government find that there is a reasonable chance of getting it through this House. Then, Sir, it has been said by my honourable friend Khan Bahadur Hafiz Hidayat Husain that if the opinion and votes of those persons who are not interested in the question of land were excluded from the votes which have been given in favour of this Bill, the result would be that all those persons who are interested in this matter in the House would be found to be against this measure. Sir, so far as the non-official members of this Council are concerned, they chiefly consist of two sections, namely, zamindars and my lawyer friends. Of course, the majority of them are zamindars. May I ask if there is any gentleman in this House who is a tenant and tenant throughout? It may be due to the defective constitution, but in any case it was very ungenerous on his part to say, taking the constitution of this honourable House as it is, that if the votes of those persons who do not belong to the order of zamindars are taken out, then this Bill would become a Bill which would not be liked by any person in this House interested in agrarian problems. I can only say that if some tenants were here today in the places of some of my zamindar friends, I am quite sure that the result of the voting and the trend of speeches would have been something quite different from what they were, and it would not have lain in the mouth of any member to say as Khan Bahadur Sahib has said. Sir, I may assure my zamindar friends that my present attitude is not in any way due to any animosity against the zamindars, for unfortunately I also belong to that very class.

An honourable member "Why unfortunately"?

I use the word "unfortunately" because had I belonged to that noble order "fortunately," my attitude should also have been identical with theirs. Whatever I have said in this House in regard to different amendments that were moved from time to time was not due to my being either an anti-zamindar or a pro-tenant. I have kept the interests of both the communities before me and so has my party done. We have given whatever we thought was absolutely necessary for a zamindar as a proprietor of land to possess, and we have also tried to give to the tenant what we thought he required as a genuine cultivator of land. I will only remind the honourable members on the cross-benches that it is now high time that they should take stock of the things around them and see that autocracy is now out of date. This is an age of democracy and they should go still further and realize that this is an age in which labour must rule. If they look to other countries and if they go into the history of Russia, they will find that very horrible deeds have been perpetrated there in order to secure things which we are trying to secure by a legislation like this. If my zamindar friends would adopt a reactionary attitude, an attitude which would disregard the interests of tenants altogether, I am afraid they would be courting Bolshevism in this country which, it is not for me to say, is one of the most horrible things which one can imagine. Therefore in the interest of peace and order, in the interest of freedom of the country and in the interest of the zamindars themselves, I do appeal to them not to look at this question from the sole point of view of zamindars from whom this Bill may demand certain sacrifices, but from a wider and greater standpoint and from the point of view of the effect which it would produce on the

teeming masses and the dumb millions, who do not possess any leader of their own. It has been said that the zamindars are the natural leaders of men. I have no hesitation in admitting that, and keeping that in view I hope that they would do things in this House which behove a leader of men, and on that account I appeal to them.

Hon'ble Sir Sam O'Donnell: I do not propose to deal with the criticisms which have been passed upon the details of the Bill. I have dealt with those criticisms on more than one occasion during the course of our debates, and there is nothing which I can usefully add at the present stage. I propose rather to discuss the general aspect of this Bill.

The decision to introduce a Bill radically amending the existing Act was not taken hastily or lightly. As far back as 1916 the able and experienced revenue officers who examined Act II of 1901 and its working came to the conclusion that it was seriously defective. Various circumstances conspired to retard the inception of legislation; but in 1923 we came to the conclusion that further delay would not be tolerated and that we should be shirking our responsibilities if we did not tackle the question. We were well aware of the difficulties which lay ahead, we knew that no measure which we could sponsor was likely to give complete satisfaction to any party, but we felt that that was a consideration which should not deter us from going ahead. The responsibility rested on us and it was our duty to discharge it to the best of our ability.

In framing this Bill we have sought to pursue a middle course, to hold the balance evenly, and to do justice so far as practicable to the conflicting interests. And, Sir, we have not been actuated by any spirit of hostility to the land'rd class. It ought not to be necessary for me to say that. If I do so, it is because of certain remarks which have been made perhaps in the heat of the debate by certain members. If we have asked the landlords to concede to their tenants longer tenures and more moderate rents, have we not at the same time been careful to provide for proprietary cultivation and for the realization of rents? Are we not proposing to add more than two million acres to the area of *sir*? Are we not providing under clause 4 (e) for the acquisition of further *sir* by those who need it? And yet again, is there not a further provision for the acquisition of *khud-kasht* in clause 40? I do not propose to attempt to refute in detail the criticism that clause 40 will not give the landlords the land they need. I maintain that it will, and I maintain that I have behind me the experience of the working of an analogous provision in the province of Oudh where landlords have obtained land when they really needed it and applications have only been refused when they were made solely for the purpose of ejectment. And, Sir, have we not in clauses 80 and 81 introduced a new and more speedy procedure for the realization of rents? As to the criticism that the period that the court may give is longer than some members think it should be, my answer is that if the period had been reduced to three months, that provision would have operated most harshly against tenants in difficulty. The object was to enable the landlord to realize his rent more speedily, but not in a way that would be unjust and oppressive. And lastly, Sir, if we have asked the landlords on their side to make concessions, have we not been willing to make them on our part? Have we not introduced a Bill which offers the landlords longer settlements and more lenient assessment?

[Hon'ble Sir Sam O'Donnell.]

Time alone can show how far we have succeeded in the objects which we placed before us when we introduced this Bill. But we have never claimed that this Bill was a final solution of the agrarian problem. We should ourselves have liked to see occupancy rights conferred upon all tenants, and I for one believe that in the course of time such rights will be conferred and with the consent and approval of all parties. But, Sir, in our judgement this Bill, even if it falls short of what, given a free hand, we should have made it, has at any rate marked a definite and a substantial advance on the present Act. While making ample provision for the proprietary cultivation of landlords and the realization of rents, it will give security of tenure for long periods to the non-occupancy tenants and protection against the arbitrary enhancement of rent, and it will put an end to or very greatly reduce an immense volume of harassing and embittering litigation.

We have heard in the course of this debate the most gloomy prognostications regarding the outcome of this Bill. May I remind those members who take that line of what I said on a previous occasion. It is natural, it is perhaps inevitable, that when a measure is introduced which curtails in any way the powers of a class, that class should be filled with apprehensions. History is full of such cases. Again and again such a class has proclaimed that some measure of reform meant its destruction and again and again such fears have been completely falsified. It has not ceased to exist, it has continued to flourish, and its position has been strengthened rather than weakened. I do not believe that history contains a single example of a class having suffered in the long run for making timely concessions to changed conditions, and history contains many examples, some of them of recent occurrence, of the consequences of a refusal to do so.

I believe in this case too that the fears, have been expressed by a number of landlords will be shown by a few years' experience to be without justification. This Bill will not destroy the income of the landlords, it will not impair their legitimate influence, it will not deprive them of their honourable position in the life of this province. In the long run it is not by insisting on the retention of arbitrary powers, but by establishing good relations between themselves and their tenants, that they can hope to maintain that position. And good relations cannot exist as long as there is a large body of tenants without any protection. If there are any who do not realize that, then they have signally failed to read the signs of the times.

We have had our differences on this Bill. Have we not also had our agreements? And is not the measure of agreement much larger than the measure of difference? After all, there are only a few points on which we have not all been able to see eye to eye. Can it be seriously argued that on account of such differences this Bill, the principles of which were accepted a few months ago by the Council with one dissentient vote, should be rejected? I cannot for a moment believe that that is the course which the Council will take. I am convinced that today the Council will set its seal on the work on which we have been so long engaged, and that by so doing will greatly enhance its own reputation.

Question put, that the Bill be passed.

The House divided: Ayes, 40; Noes, 28.

Ayes.

Hon'ble Sir Sam O'Donnell.
 Hon'ble Lieut. Nawab Muhammad Ahmad
 Sa'id Khan.
 Mr. G. B. Lambert.
 Mr. E. A. H. Blunt.
 Kunwar Jagdish Prasad.
 Sir Ivo Elliott.
 Mr. H. A. Lane.
 Mr. R. L. Yorke.
 Mr. B. Baro.
 Mr. A. W. Pim.
 Mr. B. J. K. Hallows.
 Mr. E. L. Norton.
 Mr. H. G. Billson.
 Mr. R. J. S. Dodd.
 Colonel A. W. R. Cochrane.
 Mr. A. H. Mackenzie.
 Mr. M. F. P. Herchenroder.
 Mr. H. C. Desanges.
 Mr. H. David.
 Babu Khem Chand.

Babu Narayan Prasad Arora.
 Babu Sangam Lal.
 Babu Mohan Lal Saksena.
 Pandit Nauak Chand.
 Lala Babu Lal.
 Thakur Shiva Narayan Singh.
 Babu Nemi Saran.
 Chaudhri Badan Singh.
 Thakur Sadho Singh.
 Pandit Brijnandan Prasad Misra.
 Pandit Jhanni Lal Pande.
 Pandit Sri Krishna Dutt Paliwal.
 Pandit Yajna Narayan Upadhye.
 Pandit Baijnath Misra.
 Pandit Govind Ballabh Pant.
 Babu Ram Chandra Sinha.
 Babu Sita Ram.
 Mr. E. M. Soutor.
 Mr. Tracey Gavin Jones.
 Rai Bahadur Babu Vikramajit Singh.

Noes.

Babu Jai Narayan Chaudhri
 Chaudhri Jaswant Singh.
 Rai Amba Prasad Sahib.
 Raja Suryopal Singh.
 Lala Dhakan Lal.
 Rao Sahib Kunwar Sardar Singh.
 Rai Sahib Babu Dip Narayan Roy.
 2nd-Lieut. Sahibzada Ravi Pratap Narayan Singh, Rai Bahadur.
 Bhaya Hanumat Prasad Singh.
 Rai Bahadur Thakur Mashal Singh.
 Maulvi Zahur-ud-din.
 Rao Sahib Abdul Hameed Khan
 Khen Bahadur Chaudhri Amir Hasan Khan.
 Mr. Muhammad Ismail Ali Khan.
 Maulvi Muhammad Obaid-ur-Rahman Khan.

Khan Bahadur Hafiz Hidayat Husain.
 Khan Bahadur Shaikh Masud-uz-Zaman.
 Khan Bahadur Mr. Muhammad Ismail.
 Dr. Shafa'at Ahmad Khan.
 Khan Bahadur Saiyid Muhammad Ashiq Husain.
 Khan Bahadur Maulvi Fasih-ud-din.
 Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan
 Khan Bahadur Hakim Mahbub Ali Khan.
 Khan Bahadur Munshi Siddiq Ahmad.
 Qazi Habib Ashraf.
 Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf
 Rai Bahadur Lala Bohari Lal.
 Rai Bahadur Lala Mathura Prasad Mehrotra.

THE OUDH RENT (AMENDMENT) BILL.

Hon'ble Sir Sam O'Donnell : I beg to present the report of the select committee on the Oudh Rent (Amendment) Bill.

Hon'ble Sir Sam O'Donnell : I beg to move that the Oudh Rent (Amendment) Bill be taken into consideration.

Question that the Oudh Rent (Amendment) Bill be taken into consideration put and agreed to.

CLAUSE 2.

2. To sub-section (3) of section 20 of the Oudh Rent Act, 1886 (hereinafter called "the said Act"), the following proviso shall be added, namely :—

Addition of provisos to section 20(3) of Act XXII of 1886.

" Provided, first, that if a part of a holding becomes separated from another part of the holding by the construction of a canal, the tenant or his heir shall have the right, within two years from the end of the fasli year in which the water began to run, to relinquish any one or more of the plots comprised in the part or parts so separated, if the construction of the canal materially impedes his access to such plot or plots :

[Hon'ble Sir Sam O'Donnell.]

Provided, secondly, that if the tenant retains one or more plots which have been separated by the canal he shall not be permitted to relinquish other plot or plots to which access is equally or less impeded :

Provided, thirdly, that the statutory period shall not be affected on account of a change in rent or area in consequence of the relinquishment of part of a holding under the first proviso.

Explanation.—The word 'canal' means a main channel, branch, distributary, escape or drainage cut constructed under the Northern India Canal and Drainage Act, 1873.

Rai Bahadur Thakur Hanuman Singh : I beg to move that the following two provisos be added between the second and third provisos :—

" Provided, thirdly, that it shall be competent for a tenant whose holding might have been divided by canal into part or parts, instead of relinquishing as provided in proviso first to this sub-section, to exchanges by mutual agreement one or more such parts with the holding or part of the holding of another tenant with a view to have land within easy reach for his cultivation."

" Provided, fourthly, that in the case of exchange under the third proviso the parties to the exchange shall enter into a written agreement apportioning the rent of the exchanged parts of the holdings, payable therefore, in such a way as may not reduce the existing rent of the holdings on the whole to any extent."

Hon'ble the President : The second part of the amendment had better not be moved at present.

Rai Bahadur Thakur Hanuman Singh : All right Sir. This is a very innocent amendment which I have proposed. It is neither injurious to the interests of the landlord nor the tenant. When the landlord will get his rent from the tenants between whom the exchange will take place, he ought to have no objection to the exchange. The landlords should care for their rent, and at the same time for the welfare of their tenants who may be so unfortunate as to have their holdings divided by the construction of the canal in such a way that certain portions of their holdings be so situated as to make it very difficult for them to reach those parts for cultivation. Sir, I think no longer speech than this is necessary to prove the utility of the amendment which I have proposed.

Hon'ble Sir Sam O'Donnell : The object of clause 2 of this Bill is to obviate the inconvenience and loss which would otherwise be felt by tenants in certain cases as the result of the construction of the Sarda canal. The Bill proposes to allow a tenant whose holding becomes separated by the canal to relinquish part of his holding because otherwise it might be very difficult for him to cultivate the portion so separated. This amendment goes further. It proposes to empower a tenant to exchange part of his holding with another tenant so as to secure a compact holding. But nothing is said about the consent of the landlord to this exchange. It seems to me essential that there should be provision to obtain the consent of both the landlords concerned. This has been recognized in clause 39 of the Agra Tenancy Bill which has just been passed. It is clearly unfair that because a

holding is divided by a canal two tenants should be allowed to exchange land without any reference to the landlord. Therefore, Sir, although I appreciate the object with which the honourable mover has moved this amendment—I have no doubt that he does so with the object of encouraging compact holdings—still his amendment seems to go beyond what is reasonable in the circumstances. This clause has been brought forward solely on account of the construction of the Sarda canal. There are not bridges everywhere along the canal and at places tenants may have to go long distances before they can get to their holdings, and in such cases it is obvious that they must be permitted to relinquish that portion of their holding which is inconvenient to cultivate. But if they are to be permitted to exchange holdings, then the consent of the landlord is necessary.

Pandit Nanak Chand : It has already been admitted by the Hon'ble the Finance Member that the object which prompted the mover is a laudable one, and to that object he has no objection. The only objection he has advanced is that this exchange between the tenants should not be made without the consent of the zamindar. To remove that difficulty I beg to propose an amendment as follows, that after the words "exchange by mutual agreement" in line 5, the following words be inserted "with the written consent of the landlord."

I hope that will meet the difficulty.

Pandit Govind Ballabh Pant : With your permission I propose to move an amendment to the amendment of Rai Bahadur Thakur Hanuman Singh as amended by Pandit Nanak Chand. The amendment is that after the words "with the written consent of the landlords" the words "or with the permission of the Collector in charge of the subdivision" be added.

The reason why I move this is simple. I am not actuated by the principle of consolidation in making this amendment. My idea is this, that where there are two tenants whose holdings are split up owing to the passage of a canal between them, then instead of being forced to surrender or relinquish a part of his holding, it may be open to the two tenants to come to an agreement between themselves and exchange holdings, so that the holding of one may remain on one side and the holding of the other on the other side. I accept the principle that it should not be open to them to do so without the consent of the landlord or without the permission of the court, so I propose that these words be added.

Rai Bahadur Lala Mathura Prasad Mehrotra : I rise to oppose the amendment of my honourable friend Rai Bahadur Thakur Hanuman Singh as well as the amendments to the amendment proposed by my friend Pandit Nanak Chand and the leader of the swaraj party. The principle involved in the construction of the Sarda canal was rightly proposed by the Government, and we have accepted it; but if you want to go beyond that, I am afraid it would be an encroachment upon the rights of landlords of Oudh. If the amendment with all the amendments to the amendment is carried, the consequence will be that it would mean that the principle of consolidation of holdings is going to be introduced in the Oudh Rent Act. It was only the other day, Sir, when an honourable friend of mine proposed a clause about the consolidation of holdings in the Agra Tenancy Bill. It was then opposed by

[Rai Bahadur Lala Mathura Prasad Mehrotra]

the Government benches and consequently was thrown out by the House. The meaning of this amendment is the same, and I hope that the House will stick to its views and throw this out as well.

Rai Bahadur Thakur Hanuman Singh : The amendments which have been proposed to my amendment by my friends Pandit Nanak Chand and Pandit Govind Ballabh Pant have removed the objection which was raised by the Hon'ble the Finance Member. One taluqdar member has seen fit to oppose the amendment proposed by me on the ground that the principle of exchange of holdings should not be introduced in the Oudh Rent Act. By moving this amendment, Sir, I am not trying to introduce the principle of exchange of holdings in the Oudh Rent Act. I am proposing that under these special circumstances the tenants should be given a choice either to relinquish or to exchange parts of their divided holdings. So, the insertion of the provision as proposed by me does not in any way have the effect of introducing the principle of exchange. I am sorry to remark, Sir, that even the big landlords of Oudh do not see their way to be favourably inclined towards their tenants in the matters of such trifling nature. To a tenant to take away part of his holding even under such special circumstances means a great deal; but to a landlord it does not mean much specially when his rents will be quite secure. I hope that Mr. Mehrotra will withdraw his opposition and let the provision become part of the Oudh Rent Act.

Hon'ble Sir Sam O'Donnell : It seems to me, as regards the amendment moved by Pandit Nanak Chand, that if the landlord gives his consent no statutory provision is necessary. There is nothing whatever to prevent the tenants from exchanging the lands between themselves with the consent of the landlords. They become statutory tenants in the land to which they have been admitted. Therefore that particular addition is unnecessary.

The further proposal is that there should be an appeal to the court over the heads of the landlords. Now, no such appeal is given in clause 39 of the Agra Tenancy Bill. I admit that there is one difference, viz., that owing to the construction of the Sarda Canal, the tenant is forced to give up a portion of his holding, and that is an argument for allowing him with the sanction of the court to exchange land. On the other hand, it must be remembered that this is an exceptional provision that we are introducing in the Oudh Rent Act. We never had any such provision before when canals were under construction in Agra. I think for the present we ought to content ourselves with the clause as it stands and not bring in the question of exchange. I may mention, too, that from a practical point of view the question of exchange has never been brought to our notice by the reports which we have had from districts in Oudh. We had reports that the tenants' holdings were being divided and that great inconvenience and hardship might be caused to them, and the suggestion was that they should be allowed to relinquish part of their holdings. But it was never suggested that this difficulty should be met by an exchange of lands. Therefore, Sir, I personally am in favour of the clause as it stands in the Bill.

Question, that the words "with the written consent of the landlord" be added 5 after the words "exchange by mutual agreement" in the amendment proposed by RAI BAHADUR THAKUR HANUMAN SINGH, put and negatived.

Hon'ble the President: The amendment to the above amendment proposed by Pandit Govind Ballabh Pant therefore falls to the ground.

Question, that the two provisos (as proposed by RAI BAHADUR THAKUR HANUMAN SINGH) be added, put and negatived.

Question, that clause 2 stand part of the Bill, put and agreed to.

CLAUSES 2A AND 3.

Question, that clause 2A and clause 3 stand part of the Bill, put and agreed to.

CLAUSE 4.

Substitution of new
section for section 51A
of Act XXII of 1886.

4. For section 51A of the said Act, the following section shall be substituted, namely:—

“51A. In the enhancement of the rent of any tenant under this Act, whether by decree or order or agreement, the enhanced rent shall in no case exceed his existing rent by more than one-third, subject to the condition that the rent fixed shall in no case be less than half the annual rental value of the holding at the circle or village rates which are applicable under section 51E to that class of tenant :

Provided, first, that nothing in this section shall be deemed to affect the provisions of section 4 (3) :

Provided, secondly, that where a holding has been benefited by an improvement made by or at the cost of the landlord, the enhanced rent may include an addition equal to the increased value due to the improvement over and above the limitation prescribed by this section :

Provided, thirdly, that this section shall not apply to agreements or to decrees or orders of a revenue court for enhancement of rent on account of an increase in area.”

Rai Bahadur Lala Mathura Prasad Mehrotra : I beg to move that the words “or agreement” between “order” and “the enhanced” in line 3 of section 51A, clause 4, be deleted.

By the insertion of the word “agreement” the tenants and the landlords have been debarred from making any mutual agreement. I think it is against the principles of liberty. Every person has a right to come to any private understanding. Besides that, it will also increase litigation. The usual custom in Oudh is that in most cases the landlords and tenants do come to an agreement and if that custom is to be given up, the only course open for them will be to file suits in law courts. Hence I consider it very harmful. Besides that, the only objection that could be brought in favour of keeping this amendment will be that the landlord may ask the tenant to make an agreement at a higher rate, but with the roster system with its paraphernalia of rental and village rates it will be quite impossible to do so. We can never go beyond the sanctioned rates, and so to argue in that manner is futile. Then the tenants are no longer simpletons. They know that they have acquired life-tenancy, and so they will never consent to any agreement that will be harmful to them. For these reasons I hope the honourable members of this House will accept my amendment.

Hon'ble Sir Sam O'Donnell : I may remind the honourable member in the first place that there is a similar provision in the Agra Tenancy Bill which has just been passed by the Council. The limitation to enhancement applies to agreements under that Bill just as much as to enhancements by any other method. The principle is perfectly obvious. Whatever the actual rent of the holding may be, whether it is a full rent or less than a full rent, large enhancements, suddenly made, entail great hardship. We recognize this principle in the case of settlements. We recognize that whatever the assets may be, there should be a limit to the enhancement.

It may be said that the parties have agreed to this enhancement. But it must be remembered that the parties are not always bargaining on equal terms. That is a principle the truth of which has been recognized now in Western countries for many generations. There was a time when people said "an agreement is an agreement and it must be enforced." But opinion has moved since those days. It has been recognized that when the parties are not on equal terms the agreement ought not necessarily to be enforced, and that if one party is in a much stronger position than the other, it is idle to talk about freedom of contracts. In industrial matters too this principle has been recognized. For example, a common practice used to be payment by truck, that is payment in goods. The legislature, however, stepped in and said that, agreement or no agreement, payment should be in cash. Similarly, in the case of the landlord and the tenant, the former is in a very much stronger position. If the tenant cannot get land, he has no means of livelihood except as a landless labourer. Therefore, even in the case of agreements, there ought to be some limit. The Council has already accepted that principle in the case of the Agra Tenancy Bill, and I trust it will accept it also in the case of this Bill.

Rai Bahadur Lala Mathura Prasad Mehrotra : I am not convinced by the arguments of the Hon'ble the Finance Member. He has said nothing about the roster system. When we have got the roster system, how can an agreement go beyond that, as a tenant, having no fear of ejectment, will never accept higher rates. I remember that insertion of the word "agreement" was also opposed when introduced in the Agra Tenancy Bill, though the House of course could not carry it out. I hope this time the House will be with me and delete the words proposed. †

Hon'ble Sir Sam O'Donnell : The honourable member has said that he has not been convinced by my arguments. I am afraid that as regards the honourable member I have not generally been blessed with much luck. I cannot remember a single occasion when any argument of mine has carried conviction to him. The honourable member has referred to the roster year. I do not understand how that is relevant. This clause refers to the limit of enhancement of rent. The roster year refers to the determination of fair and equitable rates of rent for the purpose of suits for enhancement of rents. That part of his argument therefore seems to be irrelevant.

Question that this amendment be made, put and negatived.

Babu Mohan Lal Saksena : I beg to move that in line 8 of clause 4 "one-fourth" be substituted for "one-third." I do not think I need say anything to commend my proposal to the acceptance of the House.

The enhanced limit of one-fourth has been accepted both by the Government and by the landlord members of this Council in respect of the Agra Tenancy Bill, and I hope the House will adopt my amendment in the same spirit and for the same reasons.

Hon'ble Sir Sam O'Donnell: The Council will remember our discussion in regard to the Agra Tenancy Bill on the question whether the limit should be one-third or one-fourth. We explained then the reasons why we thought the limit of one-third was more scientific. The Council took another view on that matter. But as the honourable members are aware, we still remain of the opinion that one-third is the more scientific limit.

Now, Sir, I admit at once that enhancements of rent by one-third every ten years might well be excessive in normal circumstances. If I thought that the effect of retaining one-third would be that normally there would be enhancements of rent by one-third every ten years, I should be entirely in favour of the amendment. But I have no fear whatever that if we retain the limit of one-third the enhancements will be excessive. The point is that one third is the maximum. The actual rates will be settled by the roster year officer. I have endeavoured to explain to the Council how the roster year works. I have shown by figures that the rates fixed are always moderate. It may be said that a limit is not required at all since the rates are fixed by the roster year. The reason, however, for having a limit is this. It is possible that there might be a very large and rapid rise in prices and accordingly in the value of the land. The roster officer might be compelled in consequence to adopt rates which in themselves and in relation to the value of the land were quite fair and equitable but which might involve, in a certain number of cases, an excessive and sudden enhancement in the roster year. Take the case of settlement. We know that there are some districts in which the percentage of revenue to assets is extraordinarily low, so that without departing from the normal percentage of assets the revenue could be raised enormously at the next settlement. We recognize that although the actual percentage may be very low, and although we might apply the normal percentage at the next settlement without departing from the accepted standard it could not be fair to do so. That is the reason why one-third is necessary. We have to provide for exceptional conditions, and we prefer one-third to one-fourth because circumstances are possible in which an enhancement of one-third may not be excessive. Everything really depends on the course of prices, and nobody can forecast what they will be. It is quite true that since 1886 circumstances have been exceptional. There have been three great rises in prices. But something of the kind may happen again and nobody can say what the course of the prices will be during the next ten years. They may go up by 100 per cent and in that case enhancement of one-third would not be excessive. My point is simply this, that we should have a limit which will provide for all circumstances. I hope I have made my position quite clear. I admit that in normal circumstances a rise of one-third every ten years would be excessive, but that cannot happen in ordinary circumstances. The rents are settled by the roster year. The one-third limit is necessary to provide for exceptional cases. I am therefore in favour of one-third instead of one-fourth.

Babu Sita Ram : I rise to support the motion of my friend Babu Mohan Lal Saksena. Considering that 25 per cent. has been accepted in the case of the province of Agra even by His Excellency the Governor, I did not think that any opposition would come from the Government benches regarding the change proposed by the mover. Before the enactment of the Oudh Rent (Amendment) Act of 1921 the rate of enhancement in Oudh was only one anna per rupee. As I said in my note of dissent, if a tenant was ejected and his land was given to another tenant, the landlord could not make an enhancement of more than one anna per rupee in that case also. When the roster system was introduced, the rents were determined by the special officer. I was told the other day by a deputy collector of my district that the rent of a tenant who was paying Rs. 2 was raised to Rs. 8 according to the roster rates : he had no alternative but to raise it from Rs. 2 to Rs. 8. Now we can see at once that even according to the roster system rents are raised very enormously and it is a real case in which tenants should be given relief. The Government is very anxious to make benevolent declarations when the point comes up to safeguard the interests of the tenants, and it was laid down so late as 1902 that when any attempts should be made by the critics of the Government to limit the rate of rent of the tenant, the Government would pay very considerate attention to that request. I refer to paragraph 9 of the Land Revenue policy of the Government of India :

" It is nowhere clearly stated, but it may be inferred, that in the opinion of their critics some limit should be placed to the amount of rent which the landlord may take from his tenant. The Government of India would have been better pleased had greater prominence and a more indisputable enunciation been given to this proposition, since it is one with which they are in cordial agreement. If it is in the interests of the ryot that are at stake, and that stand in most urgent need of protection, that protection is not less necessary when his payments are made to a native landlord in the form of rent than when they are made in the form of land revenue to the British Government " Then they conclude the paragraph in this way—" The Government of India will welcome from their critics upon future occasions, a co-operation in these attempts to improve and to safeguard the position of the tenant which they have not hitherto as a rule been so fortunate as to receive." Now, when there is a definite demand from critics of the Government that they should limit the enhancement of the rents of tenants we are met with the proposition that one-third is a scientific ratio. I may bring to your notice that in the province of Oudh the incidence of rents is much higher than what is in the province of Agra. If the honourable members will be pleased to look to the Revenue Administration Report for the year ending September 30, 1924, they will find that the total amount of cultivated area is 22 million acres, while the rental is Rs. 128,000,000. The incidence of rental comes to Rs. 5·7 per acre. This is for the province of Agra. When we look to the province of Oudh we find the cultivated area is a little over 8 million acres and the rental a little over Rs. 56,000,000, and the incidence of rental Rs. 6·7 per acre. Now when the tenants of Oudh are already paying more rental than the tenants of the province of Agra, there is no reason why in the case of the tenants of the province of Oudh there should be a greater

rate of enhancement than what has been accepted by His Excellency for the province of Agra.

Raja Narayan Pratap Singh : Is there no difference between the soil ?

Babu Sita Ram : The whole of the province of Agra and Oudh is in the valley of Ganges and Jumna and there is not much difference in the soil. Rather the soil of Agra is better and more fertile than that of the province of Oudh. Besides, the Agra province enjoys the benefits of canal irrigation which Oudh does not at present.

If you look to the provisions of the recent Settlement Bill you will find that the Government has accepted the position that the rental in the province of Oudh is higher than what it is in the province of Agra. I refer to clause 63C on page 5 of the Bill. It says "provided thirdly, that in Oudh the rates so determined shall be reduced by 25 per cent. for the valuation of the assumption area." While along with this if you will read the report of the Select Committee on this Bill you will find on page 2, section 63C it says—"We think that in view of the high level of rents in Oudh the settlement officer should, in valuing the assumption area, make a reduction of 25 per cent. on the standard rates so as to equalize the valuation of such areas in Oudh with the valuation in Agra. This will in Oudh take the place of the allowance for high-caste privilege. We have amended the section in order to give effect to our view." Therefore, it will appear that the Government accepts that the rental in the province of Oudh is higher than what it is in the province of Agra. As a matter of fact, looking at the figure, you will find that the rental in the province of Oudh is higher than what it is in Agra. When you have accepted the principle (the zamindars and the swarajists by common consent and the Government have adopted that proposition) that enhancement in the province of Agra should be only at the rate of 25 per cent. and that, too, after the expiry of 20 years, there is no reason why this principle should not be introduced in the province of Oudh where the tenants are already paying more than what their brother tenants are paying in the province of Agra. Under these circumstances my humble submission is that there is no reason why the Council should be hard on the tenants of Oudh and why they should not accept this amendment.

Khan Bahadur Maulvi Fasih-ud-din : I was under the impression that the reasons given by the Hon'ble the Finance Member were so sound as would have convinced all those gentlemen who were for reducing the maximum term from one-third to one-fourth. It should be remembered that the object of every sound tenancy legislation is to ensure the fixity of tenure and fair rents, and not the fixity of tenure and fixity of rent. In fact the fixity of rent is an evil and it tends to deteriorate all progress in agriculture. It should not be forgotten, as has been pointed out by the Hon'ble the Finance Member, that one-third is the maximum limit. It is not the limit to which every rent should be enhanced. And the parallel given by the last speaker that under the old Oudh Rent Act the enhancement was one anna per rupee does not hold good because one anna per rupee was neither maximum nor minimum. The chief argument that has been advanced by the honourable member who spoke last was that because both the swarajists and zamindars have agreed to the maximum limit of one-fourth, the same limit should be enforced in Oudh. I think his remarks were misleading, if

[Khan Bahadur Maulvi Fasih-ud-din.]

I may be excused for using this term, for the simple reason that the compromise that was arrived at between the zamindar party and the swarajist party fell through, as we all know, for some reason or other and the result was that we lost many of the points we had gained under that compromise.

Hon'ble the President : I am afraid I cannot allow the repetition of the same arguments.

Khan Bahadur Maulvi Fasih-ud-din : In fact there was no compromise about this between the swaraj party and the zamindar party and the parallel of the Agra province cannot therefore be quoted as an instance on the point. I think one-third is a very fair maximum and it does not necessarily follow that the maximum will be reached in all cases or even in the majority of cases. For these reasons I think that the amendment that has been brought forward should be withdrawn.

Rai Bahadur Thakur Hanuman Singh : A similar amendment stands in my name also. Therefore instead of moving that I would like to support the motion which has been made by my honourable colleague Babu Mohan Lal Saksena. Sir, the Hon'ble the Finance Member when replying to the debate on the motion of Lala Mathura Prasad Mehrotra said that the word "agreement" also existed in the United Provinces Tenancy Act which has just been passed, but when replying to the speech of the honourable mover of this amendment he has thought it fit to oppose it. One-fourth limit of the enhancement on the existing rent has been accepted by the Government for Agra, so there seems to me no reason why it should not be accepted in the case of Oudh. In the United Provinces the rents are much lower than in Oudh on account of the occupancy tenancy here. Then, Sir, according to the Tenancy Act which has just been passed by this honourable House today, the period of enhancement will be 20 years in Agra, while in Oudh the period of enhancement will be thirteen years after the passing of the Land Revenue Bill.

Pandit Nanak Chand : Ten years.

Rai Bahadur Thakur Hanuman Singh : No, thirteen years; because Oudh will also get 4 1/2-year term of settlement. So the Oudh landlords will get an opportunity of enhancing the rent of their tenants three times within the currency of a settlement. My honourable friend Khan Bahadur Maulvi Fasih-ud-din when speaking on this motion said that the fixity of rent was an evil. I am sorry he is not in his seat; otherwise I would have asked him whether the fixity of revenue was also an evil. I think that the limit of enhancement of rent should be the same both in Agra and Oudh. There ought to be no difference in this respect between the two provinces, especially when the rent in Oudh is higher than the rent in Agra.

Babu Mohan Lal Saksena : I was really surprised to hear the speech of the Hon'ble the Finance Member. I never expected any opposition to this motion from that quarter, inasmuch as that it had been accepted by His Excellency the Governor that in view of the decision of the Council on this point, he would not object to the limit being fixed at one-fourth, and therefore, I did not take up the time of the Council in enumerating the arguments which I had recorded in my

minute of dissent. It was argued by Maulvi Fasih-ud-din that the limit of one anna was neither the maximum nor the minimum limit of enhancement in the old Oudh Rent Act. I would just draw the attention of the House to the provision in the old Act, which runs as follows:—

“ Subject to the provisions of clauses 49 and 50, the enhancement shall not in any case exceed one anna in the rupee or $6\frac{1}{2}$ per cent. on the annual rent payable by the tenant at the time when the contract was made or the notice was issued.”

So, Sir, if one-fourth has been considered to be a reasonable limit in the case of the Agra province where there is no such provision for the maximum limit of enhancement, it is all the more reasonable in the case of the Oudh province where, as late as the year 1921, the maximum limit of enhancement was only one anna in the rupee. It has been urged by the Hon'ble the Finance Member that whatever the limit might be, on account of the roster year system, it will not affect the actual enhancement of the rent and that the provision will work most equitably. I would refer the Hon'ble the Finance Member to page 4 of the Revenue Administration Report for the year 1923-24 ending September 20, 1924, where in explaining the increase in the number of relinquishment cases it says as follows:—

“ Hardoi reports 709 applications this year for relinquishment against none in the last year. The Deputy Commissioner has explained this by (i) good prospects of the year, (ii) high wages which can be earned by the labourers in canal operations, and (iii) enhancement of rent by zamindars.”

Later on the Deputy Commissioner of Kheri explains the rise in relinquishment suits in his district as due to the general fall in prices, which is rendering the tenants unable to pay the high rents fixed when prices were high. The honourable members will therefore see that in spite of the roster year being in force there, this provision is not working equitably and many of the tenants had to relinquish their holdings. Now, the other point is that this limit has been fixed on account of the proposed amendment of the Revenue Act, otherwise there was no need for providing a limit, and so, the Revenue Act being applicable to both the provinces, it is only fair that the limits of enhancement which are being provided as a consequence of the proposed introduction of the Revenue Bill should be the same. In the Statement of Objects and Reasons of this very Bill it was said:—

“ If the landholders of Oudh are to enjoy the concession proposed in the limitation of enhancement of revenue, it follows that a provision corresponding to that in the Agra Tenancy Bill should be introduced in the Oudh Rent Act. The object of the present Bill is to secure this limitation of rent-enhancement without which it would be impossible to apply to Oudh the limitation of revenue enhancements provided in the Land Revenue Bill.”

So I simply appeal to the Hon'ble the Finance Member to stick to the Statement of Objects and Reasons and provide in the Oudh Rent Bill an enhancement limit corresponding to that provided in the Agra Tenancy Bill. With these words I hope the Hon'ble the Finance Member will see his way to accept my amendment

Hon'ble Sir Sam O'Donnell : As a reference has been made to the message of His Excellency, I may remind the Council that what that message said on this question was—

“The Government remain of the opinion that for the reasons given by the Hon'ble the Finance Member in the course of the debate, one-third is a more reasonable limit for the enhancement of rent than one-fourth; and that it is more scientific to fix the period for the periodic revision of controlled rents at one-third rather than at one-half of the period of currency of a settlement. At the same time they recognize that the movement of prices cannot be foreseen, and they are prepared to take whatever risks are involved in the changes made by the Council.”

Now, Babu Sita Ram referred to the case of a tenant whose rent was Rs. 2, whereas the roster rate was Rs. 8. I am very glad indeed that he mentioned that case, because it precisely illustrates my point. I showed when discussing the roster year system that the rates in Kheri adopted by the roster year officer were extremely moderate. I forget whether the number of objections to enhancement of rents was 3 or 17. In one district they were 3 and in another district they were 17. Whether the number was 3 or 17 the total was quite insignificant. The rates were moderate rates to which the tenants did not object. The rates were well within the capacity of the tenants to pay. I think they were 91 per cent. of the recorded rental in one district. This particular case that he mentioned, as I said, illustrates my point. Here you have a rent of Rs. 2 which is obviously a very low rent, an exceptionally low rent. Now, if there were no limit to enhancement, the rent would jump from Rs. 2 to Rs. 8 a *bigha* and that of course would be an enhancement which would inflict great hardship on the tenant. Therefore it is essential that there should be a limit to provide for exceptional cases. On the other hand it is undesirable to fix the limit too low, to fix it at a point which will not meet exceptional circumstances. There is always a danger, a danger which was emphasized by Mr. Hailey, an officer of exceptional revenue experience, in the course of the debates on the Oudh Rent Act, in fixing the limit too low. If you do that, the inevitable result is that you get *nazrana* substituted for rent. Rents are concealed, or, if that does not happen, sub-letting is encouraged.

I should like again to make it quite clear that, assuming that prices do not move rapidly and continuously, I do not think it would make any difference whether you take one-third or one-fourth. Rents will be fixed by the roster year officer quite independently of the limit and the limit will not come into operation unless there is a rapid and exceptional rise in prices. The fact of the matter is that ever since 1886 prices have been moving so continuously upwards that we all are rather apt to think that an upward movement is a sort of a law of nature. If however we examine the circumstances of that period, we shall find that they were exceptional. There was the demonetizing of silver and the fall in the value of the rupee; then there were the great gold discoveries in South Africa which led to a rise in world prices; and finally there was the Great War. It would be very difficult, unless we go to the sixteenth century, to find a parallel for these forty years. I do not for a moment profess to be able to foresee whether prices will go up or go down, but I think if I had to make a forecast I should be inclined to say that whether they go up or go down, they are not likely to move in the catastrophic fashion in which they have moved for the last ten years,

and unless there is some rapid and exceptional rise in prices, it will make no difference whether the limit is one-third or one-fourth. The advantage of one-third is that it provides for exceptional contingencies. It is quite true that the roster year comes every ten years in the province of Oudh, but it must be remembered that when the Oudh Rent Act was passed the accepted period of settlement was thirty years. Now we propose that the term of settlement should be extended to forty years. That, of course, may entail a modification of the prescribed period for the roster year. It was never contemplated that there should be more than two roster years within the period of a settlement. But, however that may be, the rates will always be fixed on a fair and equitable scale by the roster year officer, and if the rates involve enhancement the total enhancement at the end of the period of the settlement will not be affected whatever the period fixed for the framing of roster year rates.

Question put, that the words ' one-third ' stand part of the clause.

The House divided : Ayes, 55 ; Noes, 18.

Ayes.

Hon'ble Sir Sam O'Donnell.	Raja Narayan Pratap Singh.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.	2nd-Lieut. Sahibzaba Ravi Pratap Narayan Singh, Rai Bahadur.
Hon'ble Rai Rajeshwar Bali.	Pandit Baijnath Misra.
Hon'ble Thakur Rajendra Singh.	Rai Bahadur Thakur Masool Singh.
Hon'ble Nawab Muhammad Yusuf.	Khan Bahadur Mr. Muhammad Aslam Saifi.
Mr. G. B. Lambert.	Rao Sahib Abdul Hameed Khan.
Mr. E. A. B. Blunt.	Khan Bahadur Chaudhri Amir Hasan Khan.
Kunwar Jagdish Prasad.	Mr. Muhammad Ismail Ali Khan.
Sir Ivo Elliott.	Maulvi Muhammad Obaid-ur-Rahman Khan.
Mr. P. H. Tillard.	Khan Bahadur Hafiz Hidayat Husain.
Mr. H. A. Lane.	Khan Bahadur Shaikh Masud-uz-Zaman.
Mr. R. L. Yorke.	Khan Bahadur Mr. Muhammad Ismail.
Mr. R. Burn.	Dr. Shafiat Ahmad Khan.
Mr. A. W. Pim.	Khan Bahadur Saiyid Muhammad Ashiq Husain.
Mr. B. J. K. Hallowes.	Khan Bahadur Maulvi Fasih-ud-din.
Mr. E. L. Norton.	Khan Bahadur Maulvi Muhammad Faiz-ur-Rahman Khan.
Mr. H. G. Billson.	Khan Bahadur Hakim Mahbub Ali Khan.
Mr. R. J. S. Dodd.	Khan Bahadur Mr. Ashiq Husain Muz.
Colonel A. W. R. Cochrane.	Khan Bahadur Munshi Siddiq Ahmad.
Mr. A. H. Mackenzie.	Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Mr. M. F. P. Herchenroder.	Rai Bahadur Lala Behari Lal.
Mr. H. C. Desanges.	Rai Bahadur Lala Mathura Prasad Mehrotra.
Babu Khem Chand.	Raja Jagannath Baksh Singh.
Babu Jai Narayan Chaudhri.	Mr. B. M. Souter.
Rai Jagdish Prasad Sahib.	
Lala Babu Lal.	
Rai Bahadur Babu Ram Nath Bhargava.	
Raja Suryopal Singh.	
Lala Dhakan Lal.	
Rao Sahib Kunwar Sardar Singh.	

Mr. Tracey Gavin Jones.

Noes.

Babu Narayan Prasad Arora.	Pandit Jhanni Lal Pande.
Babu Sangam Lal.	Pandit Sri Krishna Dutt Palwal.
Babu Mohan Lal Sakenna.	Pandit Yajna Narayan Upadhyaya.
Pandit Nanak Chand.	Rai Bahadur Thakur Hanuman Singh.
Thakur Shiva Narayan Singh.	Pandit Govind Ballabh Pant.
Babu Nemi Saran.	Babu Ram Chandra Sinha.
Chaudhri Badan Singh.	Babu Sita Ram.
Thakur Sadho Singh.	Quazi Habib Ashraf.
Pandit Brijnandan Prasad Misra.	Rai Bahadur Babu Vikramajit Singh.

Babu Mohan Lal Saksena : I beg to move that after "one-third" in line 8 the following words be added :—

"and the rent paid by him at the time of the last settlement by more than one-half."

The effect of this amendment would be that the enhancement shall in no case be more than 50 per cent. of the rent paid by the tenant at the time of the last settlement. This amendment is also based on the same reasons as have prevailed with the Council in accepting the limit of the provision that there should be only two enhancements during the course of one settlement which would give not more than 50 per cent. because the provision in the Agra Tenancy Bill is that there shall not be enhancement of more than 25 per cent. in every 20 years so that in no case the rent shall be enhanced by more than 50 per cent. of the rent during the course of one settlement. The Government did not take into account in introducing this Bill that in the Revenue Bill the period of settlement is being extended and if the present provision of the roster year is maintained there shall be three rosters during the course of one settlement and there shall be three enhancements or rather four during the course of one settlement. As I have pointed out in my minute of dissent, if this provision is allowed to be passed as it is incorporated in this Bill, in some cases the enhancement may amount to more than 200 per cent., so we have to make provision in this Bill that the enhancement in the rent of a tenant should not exceed more than 50 per cent. of the rent paid by him at the time of last settlement. I hope the honourable members will accept this provision in view of the fact that they have rejected the former one, so that there should be at least one restriction to the enhancement of rent.

Rai Bahadur Lala Mathura Prasad Mehrotra : I rise to oppose the amendment of Babu Mohan Lal Saksena. It is quite contradictory to the amendment that we have just thrown out. The Council has given preference to the enhancement of 33 per cent. over 25 and if this amendment is to be accepted it will reduce it again to less than 25 per cent., so it is contradictory on the face of it, to the one which the Council has just rejected. Hence I oppose the amendment.

Babu Sita Ram : There is an amendment of the same nature in my name, but instead of moving it I support the amendment of Babu Mohan Lal Saksena. When there is a limit going to be placed on the enhancement of revenue, my humble submission is that it is only equitable and just that there should be a limit placed on the enhancement of rent also. The revenue will be enhanced by 33 per cent. My submission is that rent may during the course of one settlement be enhanced by 50 per cent. and the zamindars will not lose much in accepting this amendment.

Babu Nemi Saran : In this connexion I want to point out one thing and it is this, that if you look at sections 34, 35A, and 36A of the Oudh Rent Act you will find that the rent of occupancy tenants is enhanceable every five years. That is, within the settlement period which is going to be raised to 40 years by the Land Revenue Act, you would have eight enhancements within these 40 years of an occupancy tenant, and of an ex-proprietary or statutory tenant there would be three enhancements within that period. Sir, I cannot understand whether

this has been taken into consideration by the Government when bringing this amending Bill, but at least as far as I can see from what has been their consistent attitude in the Agra Tenancy Bill, their position has been that they wanted two enhancements within the period of settlement. That is, every thirteen years they wanted an enhancement to be made in the case of occupancy, ex-proprietary, and statutory tenants. I do not think there is much difference between the tenants and landlords in Agra and those in Oudh, and I think what holds good for a tenant and a landlord in Agra does also hold good regarding this enhancement in Oudh. If we take the analogy of Agra, not what has been passed in the Tenancy Bill, but what was contained in it when introduced by the Hon'ble the Finance Member, we find that the policy of two enhancements within the period of settlement has been accepted by the Government. In case of occupancy tenants now there can be seven or eight enhancements during this period and in other cases there can be three enhancements, and I think, Sir, that, if not on the same lines on which the Agra Tenancy Bill has been passed, at least on the lines on which the Agra Tenancy Bill was introduced by the Hon'ble the Finance Member, these sections must be amended, and in case they cannot be amended by this amending Bill, as they are not contained in it the amendment which has been brought by Babu Mohan Lal Saksena must be accepted by the Government as it is equitable and just. We know that, if there could be three enhancements within the period of settlement, then the rent could at most be doubled, while the mover wants it not to exceed 50 per cent. That is the only difference. But as the position stands now it can be quadrupled within the period of settlement, and I think this anomaly should be removed, even if the Government does not accept this amendment.

Hon'ble Sir Sam O'Donnell : I have really very little to add to what I said before. The principle is the same in both cases. In normal circumstances I do not think it would make any difference whether we adopted the limit proposed in the amendment or the limit proposed in the Bill. The results would work out in the same way. But I prefer the provision in the Bill simply because it does allow for exceptional contingencies. It allows for the case of very rapid and continuous rise in prices, or again it allows for the case of rates which altogether are absurdly low. It allows for reasonable enhancement in these cases.

Pandit Govind Ballabh Pant : I do not think that this amendment is going to commend itself to the members of this House, but still I feel that it is necessary for me to say a few words in the hope that they may perhaps be pleased to revise their opinion. Sir, under the Oudh Rent Act the roster period as has already been remarked by the Hon'ble the Finance Member, is ten years. And, so far as I am aware, there is no provision worth the name therein which would enable the tenants to obtain the abatement of their rents even on the basis of the sanctioned rates, sanctioned by the roster officer. So the provision is not one which can secure fair rents in every case. As to *nazrana* and the reaction of low limits on the rents recorded in papers this might have some force in case we had not the statutory tenure. But I think that with the introduction of the principle of statutory tenancy the mischief of this evil has been taken away to a very large extent. Now, I do not understand one point at all, why Government have not considered it necessary to embody in this amending Bill a clause to

[Pandit Govind Ballabh Pant.]

amend the period of the roster inquiry. For, from the nature of the Bill, and also from the remarks made at the time of its introduction, it is clear that the Bill was introduced so as to bring it into line with the Bill that will come up before the Council in a day or two for the amendment of the Land Revenue Act. I do not at all understand why the Government, with its insurmountable love for the figure "3" should not have stated here that there will be only three periods for enhancement during the period of settlement on the basis of the roster system. We consider that figure "3" as very inauspicious, and think that wherever it has been introduced it has entailed some very disastrous consequences. So we would have followed it with certain amendments of our own. But what may be inauspicious for us may be auspicious for the Government, so they could have at least brought forward their proposals on the same lines on which they had entered it in the Agra Tenancy Bill. I am absolutely unable to divine the reason which induced the Government to omit that provision from their amending Bill. In the circumstances the only course that is open to the Council is to provide the same limit that should apply to the rates of rent during the entire period of settlement. However prosperous may be the condition of the tenants in Oudh, and however unexpected the developments that may follow hereafter, it is unimaginable that in the course of one settlement there can be an enhancement of more than 200 per cent. even in very rare cases; for if you have the limit of one-third and the roster period of ten years, then in the course of one settlement period the enhancement can be much more than 200 per cent. Even in very exceptional cases I fail to think that such a course is possible or can be expected to materialize even in the case of the most fortunate tenants and landlords. So I submit that the provision as it obtains in the Bill is of a very arbitrary character and has absolutely no justification, and the roster inquiry after every ten years, even when the period of settlement has been prolonged, can only be a costly process which cannot possibly be of any advantage to anybody. If I have been able to follow the remarks of the Hon'ble the Finance Member, he does not expect any phenomenal or any unexpected changes and movements in the prices in the near future. In the province of Oudh we have also to remember that up to a few years ago all the tenants were mostly non-occupancy tenants. The rents were probably fixed on the basis of free competition. There were no safeguards. The rent-rates, as has already been remarked by the honourable member for Kheri, are higher there than those obtaining in the province of Agra, though I am prepared to accept that such a comparison cannot possibly be very satisfactory in every respect, for in the province of Agra itself the rates of rent vary largely from one end to the other. But anyway, taking the two provinces together, the average rental in Oudh is higher than that in Agra. That also indicates that the room for enhancement is not as great there as it can be in Agra. Government, when it introduced the Bill, put down one-third as the limit and one-third of the period of settlement as the period for roster inquiry in the Agra Tenancy Bill. They did not think—if I am allowed to interpret the message of His Excellency the Governor in that light—that the amendments made by the Council were altogether of an extra-

vagant or wild character but are such as can be acceptable. In the circumstances, I think, that the course that has been prescribed in this Bill is not on the analogy even of the Bill introduced in the Council. Taking into consideration all the other factors, it does seem invidious that there should be such a distinction between two neighbouring provinces under the same Government. But apart from administrative reasons, on economic grounds also I think that the two should be brought nearer to one another and the tendency to separate them from one another should be discouraged.

The Council here adjourned for lunch.

After the recess—

Babu Mohan Lal Saksena : I first of all proceed to deal with the arguments of the Hon'ble the Finance Member. The only argument which he put forward was the roster, with which he seems to be in love and which he thinks to be the solution for all difficulties, pointed out by me. I wish to point out to the honourable members of the House as to what will be the effect of the present section on the tenants of the province of Oudh. In the Oudh Rent Act there are two sections under which enhancement can be made. One section relates to the enhancement of the rent of occupancy tenants, and under this enhancement could be made every five years, as has been pointed by my friend Babu Nemi Saran. The other section relates to the enhancement of rent of statutory tenants. Here the enhancement could be made every ten years. As I have shown in my note of dissent, if this section is allowed to be enacted the result will be that the enhancement will be in the case of statutory tenants a little more than 200 per cent. The Hon'ble the Finance Member said that this will not be possible on account of the provision of the roster year. I want to put one question to the Hon'ble the Finance Member and it is whether this limit is being introduced in the Act in the interests of the tenants or of the landlords. If it is being introduced in the interests of the tenants, then a lower limit will certainly benefit them. If it is not at all applicable to the actual tenants where on account of the provision of the roster year the rent will automatically not be enhanced by more than that fixed by the roster year and which in most cases will not come to more than the lower limit and which in any case will be as much as one-third, I put it to him—where is the use of providing this limit at all? If it is being introduced in the interests of the landlords, as it is said to cover those cases in which the rent of the tenant is much lower than that fixed by the roster, then I put it to him that it is simple misrepresentation of facts. The reason given in the Statement of Objects and Reasons is that it is being introduced on account of the provision that has been made in the Revenue Bill which is coming before us in a few days. I put it to him: what advantage will the tenants derive by the introduction of this enhancement limit in the Revenue Bill? I hope, Sir, the honourable members of this House will take into consideration whether they are going to allow the landlords—of course I do not take into account the good landlords; for when we legislate it is to meet the case of exacting landlords that we make such provisions—whether they are going to allow the landlords the latitude to make enhancements to the extent of little more than 200 per cent. in the case of statutory tenants and in the case of occupancy

[Babu Mohan Lal Saksena.]

tenants to the extent of a higher percentage in whose cases the enhancement can be made every five years. The enhancement is fixed at one-third and if it is allowed, I think during the course of one settlement the enhancement in their case will come to 500 per cent. The Hon'ble the Finance Member may say that this will not be possible on account of the provision of the roster year. Now let us examine the case of the tenant referred to by the Hon'ble the Finance Member—the tenant who has been hitherto paying rent at a low rate of Rs 2—if this provision is allowed to be introduced in the Bill, the result will be that in the course of one settlement, his rent will be increased five times. The honourable members will realize that it will entail a serious hardship to a person who for whatever reasons has been paying a low rent. Again, the provision of the roster year is not so automatic as will adjust the rents of the tenants, as has been made out by the Hon'ble the Finance Member. The honourable members will remember that there is no provision in the Oudh Rent Act in regard to the abatement of rent. So, in the case of those tenants whose rents are still higher than those fixed by the roster system, they have no right to apply for abatement. It will appear, therefore, that the roster system works in favour of the landlords and will enhance the rents.

My last argument is the one which was put most forcibly by Pandit Govind Ballabh Pant. I wish to inquire what led the Government not to introduce a clause in this amending Bill to provide for extending the statutory period of ten years. The Land Revenue Bill provides that the settlement period will be increased from thirty to forty years, and if this Bill is passed, the tenant in Oudh will derive no advantage from it. His period of enhancement shall remain ten years and the limit will be one-third. Now, I admit one-third is the maximum limit in Oudh, as has been pointed out by the Hon'ble the Finance Member, and also that in most cases it will be lower than the limit. But the honourable members should bear in mind that up to the year 1921 in Oudh the maximum limit of enhancement was one anna in the rupee, and now to fix the limit at $33\frac{1}{3}$ per cent. is nothing short of a calamity. For, once you introduce the maximum limit, the zamindars will think that it is their right, as is obvious from the speech of my friend, Mr. Mehrotra, to have enhancement at least to that extent. In the circumstances, I will appeal to the zamindars of Agra province not to enact the proverb used on another occasion by Rao Sahib Abdul Hameed Khan, that the food of one is the poison of another. The conditions of the tenants in Oudh are not much different from those of the tenants in Agra, but if they do differ, they are certainly worse. My amendment is simply to limit the percentage of total enhancement during the course of one settlement. It is not an extraordinary demand, especially when the enhancement in the case of revenue is going to be fixed at $33\frac{1}{3}$ per cent. To my mind it is but reasonable that the zamindars should agree to an enhancement in the rent of 50 per cent only and not more which will certainly be more than what they will have to pay in the next settlement. With these words I commend my amendment to the acceptance of the House.

Hon'ble Sir Sam O'Donnell: As regards the roster period, I think it is possible—I am not announcing any decision of the Government as the point has not been examined—that we may have subsequently

to consider the period at present fixed, if only on the ground that it would be extremely difficult to provide a sufficient number of officers to carry out roster year operations every ten years.

As to *nazrana*, I agree with the honourable member for Naini Tal that the conferment of statutory rights on the tenants has undoubtedly greatly diminished the opportunity as for the taking of *nazrana*. My point is that if you endeavour by legislation to keep rents too much below the economic level, it is extraordinarily difficult to prevent a concealed increase of rent by one means or another.

As to occupancy tenants it is true that nominally the rent of an occupancy tenant can be enhanced every five years. But if the honourable members will turn to sections 33 and 34 of the Oudh Rent Act they will find that the application for enhancement must be first on the ground that the rent paid by the occupancy tenant is below the fair and equitable rate payable by the same class of tenants having a right of occupancy for land of the same class or classes of soil; and, secondly, on the ground that the rate of rent paid by him is more than two annas in the rupee below the fair and equitable rate payable by statutory tenants of the same class for land of the same class or classes of soil. In practice, once the rent has been brought up to the level of the fair and equitable rate of rent payable by statutory tenants, no further enhancement can take place till the next roster year. In practice, therefore, enhancement could not be made every five years. The number of occupancy tenants is extraordinarily small and in any case it is quite clear that the enhancement of their rent is also in practice governed by the roster year rates. The honourable member who moved this amendment, seems to think that there is something in my arguments which is inconsistent with what is said in the Statement of Objects and Reasons. I cannot see where the inconsistency lies. We do think that since a limit is going to be imposed on the enhancement of revenue, there should be a corresponding limit on the enhancement of rent. That does not seem to me to affect my argument regarding the preferability of the one third limit to the 25 per cent. limit. As I have said before, although one-third is the proposed limit there is not the least reason to suppose that enhancements will take place up to one-third every roster year. That will happen only in the most exceptional circumstances or in the case of tenants whose rent is almost at a nominal figure. It is a mistake to suppose, as the honourable member does, that even in the case of such tenants enhancement under the one-third rule would be excessive or would result in the imposition of an oppressive rent. Take for example, the case mentioned by the honourable member for Kheri. The original rent was Rs. 2 and the roster-year rate was Rs. 8. If we work out the figures, the rent according to the one-third limit would only be Rs. 4-12 at the end of 30 years, that is a little more than half the roster year rate. There is thus no ground to fear that if there is a limit of one-third excessive enhancements of rent will be imposed. Rents will be determined by the roster year rates and those rates will always be moderate and well within the capacity of the tenant to pay. The one-third limit will only come into operation in exceptional cases.

Question put, that the above amendment be made.

The House divided: Ayes, 14; Noes, 50.

Ayes.

Babu Narayan Prasad Arora.
Babu Mohan Lal Faksena.
Thakur Manjit Singh Rathor.
Pandit Nanak Chand.
Babu Nemi Saran.
Chaudhri Badan Singh.
Thakur Sadho Singh.

Pandit Jhanni Lal Pande.
Pandit Yajna Narayan Upadhyaya.
Pandit Govind Ballabh Pant.
Babu Ram Chandra Sinha.
Babu Sita Ram.
Qazi Habib Ashraf.
Rai Bahadur Babu Vikramajit Singh.

Noes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Likut. Nawab Muhammad Ahmad Sa'id Khan.
Hon'ble Rai Rajeshwar Bali.
Hon'ble Thakur Rajendra Singh.
Hon'ble Nawab Muhammad Yusuf.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. E. L. Yorke.
Mr. E. Burn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Bilson.
Mr. K. J. S. Dodd.
Colonel A. W. R. Oochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Mr. H. C. Desanges.
Mr. H. David.
Babu Khem Chand.
Rai Jagdish Prasad Sabib.
Lala Babu Lal.

Rai Bahadur Babu Ram Nath Bhargava.
Lala Dhakan Lal.
Rao Sahib Kunwar Sardar Singh.
Raja Narayan Pratap Singh.
Rai Bahadur Thakur Hanuman Singh.
Bhaya Hanumat Prasad Singh.
Rai Bahadur Thakur Masbal Singh.
Khan Bahadur Mr. Muhammad Aslam Saifi.
Khan Bahadur Chaudhri Amir Hasan Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Hafis Hidayat Husain.
Khan Bahadur Shaikh Masud-uz-Zaman.
Dr. Shafa'at Ahmad Knaa.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasib-ud-din.
Khan Bahadur Maulvi Muhammad Fazl-ur-Rahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmad.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Rai Bahadur Lala Behari Lal.
Rai Bahadur Lala Mathura Prasad Mehrotra.
Raja Jagannath Bakhsb Singh.
Mr. E. M. Souter.
Mr. Tracey Gavin Jones.

Rai Bahadur Lala Mathura Prasad Mehrotra : I beg to move that in the second proviso of clause 4 between the words "the landlord" and "the enhanced rent" the words "or the State" be inserted. The object of this amendment is quite clear. By the second proviso it is meant that the improvements made by the landlords should be taken into consideration in enhancing the rent. By adding the words "or the State" I want that the improvements made by the State should also be taken into consideration in enhancing the rent. We all know that the Sarda canal will be running in full swing after two or three years, and this is one of the greatest improvements that Government is going to make in Oudh. I hope the Government will accept my amendment.

Mr. H. A. Lane : The proposal is in effect that the landlord should be allowed to appropriate the unearned increment which is due not to expenditure of his own money but to expenditure of the money of the State. On the face of it it does not seem a very reasonable proposal. The only ground on which it could possibly be justified would be the ground that the State levied from the landlord an extra cess or an extra due when it introduced canal irrigation into the landlord's property and that the landlord got no return in exchange for the extra amount which he had to pay in the shape of Government dues. That is not the case. The only extra due or cess which is levied by Government in the case of introduction of canal irrigation from the landlord is the owner's rate. The owner's rate is, at the most, levied at one rupee per acre. When canal irrigation is introduced, the rent which the landlord gets from his

tenant owing to the increased value which the canal water gives to the land, is very much more than one rupee an acre. Therefore, the owner's rate is returned to the landlord's pocket already in the enhancement of rent which he gets from the tenant. It seems to me, therefore, that this proposal is in effect nothing more or less than a proposal that the landlord should get the full benefit of any improvement due to expenditure to which he has contributed nothing whatsoever. There is no reason at all why the landlord should be allowed to appropriate more at the expenses of the tenant by taking this unearned increment. On these grounds I oppose the amendment.

Rai Bahadur Lala Mathura Prasad Mehrotra : I was surprised to hear the remarks of Mr. Lane. We gave one of the most important concessions in clause 2 of the Bill by giving up our right of ejectionment on those plots which will be separated by the Sarda canal, and we were under the impression that that we would receive this small compensation from the Government. Both of them are one and the same in point of fact, but the Government has thought it fit to oppose my amendment. I am sorry I cannot withdraw this amendment of mine and hope the Hon'ble the Finance Member will reconsider the position.

Hon'ble Sir Sam O'Donnell : The clause as it stands, of course, does not say that if the value of land goes up in consequence of the construction of a canal there is to be no increase in the rent. It merely says that the limit of one-third is not to be relaxed on that account. It undoubtedly allows for a substantial increase in rent on account of the benefits of canal irrigation. Of course everybody knows that when canals are constructed rents do tend to go up. But when the State constructs a canal at its own expense and not at that of the landlord the enhancement shall not exceed one-third. That surely is perfectly reasonable.

Question, that the above amendment be made, put and negatived.

Rai Bahadur Lala Mathura Prasad Mehrotra : I beg to move that clause 4 of the Bill be deleted.

I want to make my position clear at the very outset. It is not for the sake of a limit of 33 per cent that I am moving for the deletion of this clause. We know that there will be very rare and exceptional cases in which an increase can be made of more than 33 per cent. But it is upon some other principles which are involved in it that I am opposing this clause.

We have been given certain privileges by the Government, pledges in regard to the Oudh Rent Amendment Act, but this time I am sorry to say that they have been violated. We have received pledges from the Secretary of State and the heads of the provinces that no amendment in the Oudh Rent Act will be introduced without the consultation and consent of the landlords. But it was not done this time. I will just quote two short sentences from the speech of Sir Ludovic Porter, the then Finance Member, at the time of the introduction of the Oudh Rent Amendment Bill in 1921. In introducing the Bill he said:—"Before introducing this Bill we have conducted long and anxious negotiations with that great body known as taluqdars of Oudh." Then further on, he said: "This great body of landlords occupies a privileged position and they have been publicly given pledges in the

[Rai Bahadur Lala Mathura Prasad Mehrotra]

past, which no Government can possibly ignore." They were repeated in that year and even then we find that after a lapse of only four years the Government has changed its angle of vision and has introduced substantial amendments without the consultation and consent of the landlords.

Then, it also goes against the spirit of the compromise under which no limit of enhancement was to be introduced in the Oudh Rent Amendment Act, nay, when an honourable member brought in an amendment, the Government vehemently opposed it. So this clause breaks that compromise which is referred to by an honourable member in his note of dissent. He says:—"It is a matter of common knowledge that limitation on the amount of enhanced rent which existed before the amendment of 1921 was withdrawn as part of contravailing concessions to landlords who in their turn agreed to recognize life tenancy in place of the tenancy-at-will before 1921." When an honourable member of the House introduced an amendment that the limit of enhancement of rent should be 25 per cent. in November, 1922, the Government rightly opposed this amendment and in opposing it, the Hon'ble Sir Ludovic Porter, the then Finance Member said:—"Having regard to these two safeguards (the roster system and the court to determine a fair and equitable rent), I think it will be *disastrous to stereotype what was the worst feature of the old Act and try to force the limit of enhancement by statutory law.*" That was the opinion of the Government in 1921; but after a lapse of four years the Government has changed its opinion, and is going to limit the enhancement to 33 per cent. Four years ago they thought that no limit should be made in any statutory law, but now they think that it is necessary. I, therefore, fail to understand what has brought about this change in their views.

For these reasons, I move that this clause should be deleted.

Hon'ble Sir Sam O'Donnell: The honourable member who has moved this amendment has said that pledges were given that no amendment of the Oudh Rent Act would ever be introduced without the consent of the taluqdars. This is the first time I have heard of any such pledge. No mention was ever made of this when this Bill was introduced nor in the Select Committee. I am afraid that the honourable member has drawn on his lively imagination.

The honourable member has asked why we think it necessary to introduce this Bill at all. The reason is explained in the Statement of Objects and Reasons. We have introduced the Revenue Bill which proposes that there shall be a limit to the enhancement of revenue on any mahal of one-third. At present there is no limit. There are executive instructions by which if an assessment exceeds one-third a reference has to be made to the Government of India. But there is no limitation in respect of a mahal. I think that the Oudh taluqdars will realize that if they are to get the benefit of the provisions of the Revenue Bill they cannot reasonably ask us to give them the advantage of this provision if there is to be no corresponding limitation in the case of the enhancements of rent. There is no question whatever that the limit which we have proposed is too low. It has been criticized as unduly high. As the Council knows, I do not accept that criticism.

But no complaint has been made that this Bill does not allow a reasonable enhancement of rent.

Khan Bhadur Munshi Siddiq Ahmad :

جناب والا —

میں اپنے دوست آپریل لالہ متھرا پرشان مہروٹرا صاحب کی تحریک کی تائید کے لیے کہتا ہوا ہوں لیکن قبل اس کے کہ میں کچھ اصل تحریک کے متعلق عرض کروں میں ایک خاص اور نہایت اہم معاملہ کے متعلق گورنمنٹ کو توجہ دلانا چاہتا ہوں۔ یہ امر مسلمہ ہی اور جن صاحبان نے اودھ کی تاریخ دیکھی ہی انہیں اچھی طرح معلوم ہی کہ اودھ میں کاشتکاران کے کوئی حقوق اراضی میں نہیں تھے۔ سب سے پہلے جب قانون لگان اودھ کا مسودہ مرتب ہوا تھا اُس وقت پہلے تعلقہ داران اودھ سے اس کے متعلق رضامندی حاصل کی گئی تھی چونکہ اودھ میں کاشتکاران کے مسلمہ طور پر کوئی حقوق نہیں تھے لہذا بغیر تعلقہ داران کی رضامندی کے اُن کو کوئی حقوق دینے میں گورنمنٹ کو دشواری محسوس ہوئی تھی اُس وقت صاف الفاظ میں گورنمنٹ نے یہ وعدہ کیا تھا کہ اُن کے یعنی تعلقہ داران کے حقوق میں کوئی دست اندازی نہیں کی جائیگی اور قانون لگان اودھ میں آئندہ کوئی ترمیم بغیر اُن کی رضامندی کے نہ ہوگی۔ مالکان اراضی خواہ وہ صوبہ اودھ کے ہوں یا صوبہ آگرہ کے اُن کی خصوصیات میں یہ داخل ہی کہ جب اُن کی فیاضی اُن کی دریا دلی اور اداوارزمی اور خاندانی روایات کے حوالہ سے اپیل کی جاتی ہی تو وہ ضرور پسپا جاتے ہیں اور کچھ نہ کچھ ایثار کے لیے تیار ہو جاتے ہیں۔ یہ تعلقہ داران سے بھی ایسی ہی اپیل کی گئی تھی کہ وہ اپنی فیاضی سے کاشتکاران کو کچھ حقوق دیں اور وہ خوشی سے کچھ حقوق دینے کے لیے راضی ہو گئے تھے۔ سنہ ۱۹۲۱ء میں جب قانون لگان اودھ میں ترمیم کا مسئلہ پیش ہوا تھا تو سب سے پہلے تعلقہ داران اودھ سے مشورہ کیا گیا تھا متعدد کانفرنسیں کی گئیں۔ ان میں اس قانون کے متعلق تعلقہ داران اودھ کو بالانفرد و بالاشتراک بہت کچھ سمجھایا بٹھایا گیا تھا اور وہی چلتا ہوا جادو کام میں لایا گیا تھا جو نظری طور پر مالکان اراضی کو تسخیر کر لینا ہی حسن اتفاق سے اُس زمانہ میں اس صوبہ میں ایک ایسا شخص حکمران تھا جو صوبہ ہی میں نہیں بلکہ لوگوں کے قلوب پر حکومت کرتا تھا اور بعض اُن ہی کی وجہ سے اور صرف اُن ہی کی خاطر سے تعلقہ داران نے اس بات کو منظور کر لیا تھا اور اودھ کے کاشتکاران کو حق حین حیاتی دینے کے لیے رضامند ہو گئے تھے۔ اُس وقت بھی تعلقہ داران سے یہ کہا گیا تھا کہ تمہارے حقوق پامال نہیں کیئے جائیں گے اور جب بھی کوئی ترمیم اس قانون میں ہوگی تو بلا تمہاری رضامندی کے نہیں ہوگی۔ انقراض سلطنت اودھ کے بعد سے جتنے وائسرائے اور چیف کمشنر اور افسرین گورنر اور گورنر ہوئے ہیں انہوں نے ہمیشہ تعلقہ داران کے حقوق و مراعات کو قائم و بحال رکھنے کا وعدہ کیا ہی اور اُن کی وفاداری و خیرخواہی کا اعتراف فرمایا ہی۔ یہ سب سے پہلے مسودہ قانون ہی جس میں

[Khan Bahadur Munshi Siddiq Ahmad.]

نہ تعلقہ داران سے اور نہ اُن کی انجمن سے کوئی مشورہ کیا گیا اور نہ اُن کی رائے لی گئی۔ گورنمنٹ آف انڈیا یا لوکل گورنمنٹ کے تمام مسودات قانون خواہ براہ راست اُن کا تعلق تعلقہ داران سے ہو یا نہ ہو معمولاً طلب رائے کی غرض سے اُن کی انجمن میں بھیجے جاتے ہیں۔ تعجب ہی کہ یہ مسودہ قانون جس کا خاص تعلق اودھ کے تعلقہ داران سے ہی اُس کے متعلق اُن سے کوئی رائے نہیں لی گئی ہی نہ اُن کی انجمن میں یہ مسودہ بہ طلب رائے بھیجا گیا۔ تعلقہ داران کو اِس کا نہایت افسوس ہی اور وہ اِس کو نہایت خطرہ اور اندیشہ کی نگاہ سے دیکھتے ہیں کہ آئندہ یہ اُن کے حقوق کے منافی ہوگا اور خلاف عمل درآمد نہیم شاید دوسرے موقعوں پر بھی اُن کے حقوق اسی طرح سے نظر انداز کیئے جائیں گے اِس کے متعلق اُنہیں گورنمنٹ سے شکایت ہی اور اِس کا اُن کو بہت افسوس ہی۔ اب میں اصل تحریک کے متعلق کچھ زیادہ عرض نہیں کرنا چاہتا کیونکہ لالہ متھرا پشاد صاحب نے اِس کے متعلق ضروری باتیں بیان کر دی ہیں۔ دفعہ ۵۱ (الف) کا یہ منشا ہی کہ اضافہ لگان کی حد معین کر دی جائے اِس سے پہلے سنہ ۱۹۲۱ء میں جب یہ مسئلہ پیش ہوا تھا تو تعلقہ داران اودھ سے یہ کہہ کر ہٹ گئے تھے کہ ہمارے ساتھ یہ ایک خاص رعایت کی جا رہی ہے کہ گورنمنٹ اضافہ لگان کی حد اور قید کو اُٹھا رہی ہے اور کوئی حد اضافہ لگان کی نہیں رکھتی گو تعلقہ دار اُسے بخوبی سمجھتے تھے کہ بے تکرار اضافہ لگان ممکن نہیں ہے اور وہ ہر کاشتکار پر بلا امتیاز اضافہ نہیں کر سکتے ہیں۔ تاہم چونکہ اِسی قید وہ اپنے مالکانہ حق کے خلاف سمجھتے تھے اِس لیے اُس دل خوش کن بات پر راض ہو گئے تھے۔ لیکن گورنمنٹ اب اُسے بھی واپس لینا چاہتی ہے۔ میرے دوست نے یہ بھی یاد دلایا ہے کہ اضافہ لگان کے متعلق انٹریل پنڈت گوکرن ناٹھ، مصر نے یہ تحریک کی تھی کہ ۲۵ فیصدی سے زیادہ اضافہ نہ کیا جائے اور اِس تحریک کی گورنمنٹ نے بڑی شد و مد سے اِن الفاظ میں مخالفت کی تھی کہ پُرانے اہمیت میں جو سب سے بڑی غلطی تھی وہ یہ تھی کہ اُس میں اضافہ لگان کی ایک حد مقرر کر دی گئی تھی، اُس کی وجہ سے انواع و اقسام کی خرابیاں پیدا ہو گئیں مثلاً نذرانہ وغیرہ۔ ابھی پورے پانچ سال پہلے قانون لگان اودھ کو نافذ ہوئے نہیں گذرے ہیں اور اِس مسودہ قانون لگان اودھ میں وہی بات پورے درج کی جاتی ہے جو سنہ ۱۹۲۱ء میں فاش غلطی سمجھی جاتی تھی۔ یہ سمجھ میں نہیں آتا کہ اُسی غلطی کا ارتکاب سنہ ۱۹۲۶ء میں اِس قدر جلد بغیر تجربہ حاصل کیئے ہوئے کرنے کی ضرورت کہیں پیدا ہو گئی اور وہ بوجہ خلاف دستور قدیم بغیر تعلقہ داران سے پوچھے یا اُن کی رضامندی لینے ہوئے۔ اِن الفاظ کے ساتھ میں اِس تحریک کی تائید کرتا ہوں کہ دفعہ ۵۱ (الف) خارج کر دی جائے۔

Rai Bahadur Lala Mathura Prasad Mehrotra : The Hon'ble the Finance Member in his reply to my arguments has said that no pledges were given. That point has already been answered by my friend, Khan Bahadur Munshi Siddiq Ahmad. Then, Sir, he said

that there should be a limit in the Oudh Rent Act because there is going to be a limit under the Land Revenue Act. I say, Sir, there can be no analogy in the two and here in support of my argument I will quote the words of Mr. H. R. C. Hailey, who, in opposing the same amendment of Pandit Gokaran Nath Misra, said :—"I have a strong belief that any effort on the part of the Government to restrict rise in rent by imposing a maximum is bound to fail. I am convinced that the same would be the result here if you endeavour to fix the maximum rents and to keep down the rent of certain class of tenants below the market rate of the land. It is needless to me to point out that any such proposition would be the most easy to evade and the taking of *nazrana* is not the only subterfuge possible and the effective means by which the law can be evaded." He further said :—"But I may point out that according to the present rules of assessment the revenue fixed by a local Government cannot exceed 33 per cent. without special reference to the Government of India." The limit was there. It was under rules and now it is going to be codified. That is the only difference. The Government did not think it proper then to introduce any limit in the Oudh Rent Amendment Act. But I do not know why, having the same position except with the difference that there were rules there which are going to be codified now, they are going to propose a limit of enhancement by an amendment in the Oudh Rent Act.

Hon'ble Sir Sam O'Donnell : Khan Bahadur Munshi Siddiq Ahmad has complained that the taluqdars were not consulted. May I remind him that apart from the four taluqdar members elected by the Association, there are nine taluqdars and zamindars of Oudh in the Council. Moreover a number of taluqdars or zamindars were members of the Select Committee and my recollection is that there was no serious opposition whatever to this Bill when it was introduced. The same honourable member, I think, referred to the provision of the old Oudh Rent Act that rent may not be enhanced by more than 6½ per cent. I quite agree that that provision broke down. It broke down because the limit was altogether too low. That is a valid argument for not having too low a limit. I can so far agree with Mr. Hailey that any attempt to keep rents too far below the economic level must inevitably fail. But I do not agree that there should be no limit to enhancement. Experience in the Agra province has shown us clearly that controlled rents can be kept at a reasonable figure. Lastly, the honourable mover said that we are introducing no change of principle in the Revenue Bill, because there is already an executive instruction regarding enhancements exceeding one-third. There is such an executive instruction. But, apart from the fact that it is only an executive instruction, there is the further fact that it applies only to the district. It says nothing about a mahal. The revenue of a mahal as far as the rules go might be raised to any amount without reference to any higher authority. It makes a very serious difference to the landlord whether the limit of enhancement in case of each mahal is to be 33 per cent. or whether there is to be no limit at all, and I again put it to the Oudh members of the Council that they cannot reasonably ask for that concession unless they are themselves prepared to extend it to their tenants. I am sure that they will, no doubt, be prepared to concede to their tenants in Oudh a corresponding limitation in the case of rent. As I have said, the limit is certainly not an unduly low one. It allows for a reasonable enhancement of rent at the fixed period.

Question, that clause 4 stand part of the Bill, put and agreed to.

CLAUSE 5.

Omission of sub-section (5) from section 51D of Act XXII of 1886.

5. From section 51D of the said Act, sub-section (5) shall be omitted.

Rai Bahadur Lala Mathura Prasad Mehrotra : I beg to move that clause 5 of the Bill be omitted . . .

Sir, by enacting this clause 5 Government wants to interfere with the roster year system that has been embodied in the Oudh Rent Act. We have not sufficient experience of the system yet as we said in the Select Committee.

Hon'ble the President : The honourable member is perhaps inadvertently going to disclose what happened in the Select Committee, which he ought not to do.

Rai Bahadur Lala Mathura Prasad Mehrotra : We discussed this point outside the Council and the opinion on it was sharply divided, but the majority are in favour of the retention of this clause and they think that that is the only means by which we can know the exact produce of every field properly. I therefore think that the Government should wait for some time more till we have more experience of the roster system in Oudh and after that it can be easily judged whether it is proper to retain the sub-clause or not

Babu Sita Ram : I wish to support the motion of my honourable friend, Lala Mathura Prasad Mehrotra, that this clause be deleted for the very reasons which have already been given by him. I think that we should have more experience regarding the working of this clause before a change is made in the law.

Mr. H. A. Lane : It has been suggested that it is premature on the part of Government to, what has been called, interfere with the roster year system as it appears in the Oudh Rent Act. This might be true if the roster year system were a system which existed only in the Oudh Rent Act, but in effect the roster year system is the system which has been used in every settlement which has been made in the United Provinces for a great number of years. The reason why Government wish to make these alterations in the roster year system as it occurs in the Oudh Rent Act is that in their opinion there are some features in this scheme of the Oudh Rent Act which are fundamentally opposed to the whole principle of the roster year system. The choosing of the exemplar fields is intended solely for the purpose of comparison, and the question really resolves itself into this: whether these exemplars which are chosen by the special officer are necessary at all and further whether they give a good standard of comparison. On the first point whether they are necessary, we must consider the soil classification which is made at settlement, or, if necessary, during the roster year. The method followed is that if the soil classification is satisfactory, no fresh soil classification is made by the special officer. If, on the other hand, the soil classification has become obsolete or for any reasons is unsatisfactory, then the special officer makes a fresh soil classification. Well, Sir, there is a soil classification there and I think it is not difficult to show that that soil classification in itself gives all the material which is necessary for comparison for purpose of

determination of rent. The soil classification divides the land into soil-classes, and within each soil-class are included the fields which are of similar quality, character and rent capacity. It is quite true that within the soil-class there must be certain variations but those variations are normally small. It is possible that in one village a particular soil-class differs somewhat in quality from the general standard of the assessment circle. If that is so, then the rates are modified in that village and for purposes of comparison that village would simply by the modification of the rates be excluded from the standard of comparison. Further, in the soil classification it will be found that within one village there are certain areas which vary from the general quality of the soil-class. In that case the settlement officer or the special officer invariably divides the soil-class into sub-divisions. If there is a certain area within a soil-class in a village which is above the average, he puts it into a plus sub-division and if it is below the average he puts it into a minus sub-division. In this way you eliminate by modified rates any areas which differ to any marked extent from the ordinary standard of the soil class, and therefore what is left is in itself a very fairly definite standard of quality. Well, Sir, this standard is really all that is necessary for the purpose of comparison. If a field lies within a soil-class, it may be taken that for all practical purposes the rate sanctioned for that soil-class gives a fair valuation for that field, and it is therefore quite unnecessary for the special officer in addition to choose out from that homogeneous group certain fields which he considers to be typical, because, as I have said, the whole group is of the same quality.

There is another point as to whether these exemplars are desirable; and from this point of view I think it will not be difficult to show that so far from being necessary and useful they are in fact actually dangerous. The special officer is expected to choose under this section certain fields. The fields must be limited in number, otherwise they will not be of any practical use. If you are going to select fifty per cent. of all the fields in the soil-class you may just as well take the whole soil-class as a standard for comparison. If you are going to set up a standard which is going to be a standard of comparison, that standard must be constant. It must not be a standard liable to vary from year to year. If the special officer has chosen certain fields and if those fields are to be used twelve years hence by the revenue courts in order to ascertain whether the fields in suit are of the same quality as ordinary fields of the soil class, well, Sir, in that interval of twelve years a great many things may have happened. Very few fields maintain the same quality for as long a period as that; another tenant may come in who is a better cultivator and the quality of the fields which have been chosen as exemplars may have become better. On the other hand, deterioration may have set in, and those particular fields may have considerably deteriorated in quality. Sand may have deposited in them, or *reh*, or *kans* grass may have appeared. Or again canal irrigation may have been introduced and it is here that special danger lies. Supposing that canal irrigation has been introduced, then the landlord comes into court and asks for an enhancement on certain fields. The tenant says 'no.' He points out the exemplar fields and says that his fields are in the same soil-class, but in quality they are very much inferior to the exemplars. That is perfectly true; the exemplar fields are canal-irrigated fields, and the tenant has no difficulty in proving that the quality of the

[Mr. H. A. Lane.]

fields in suit is very much lower than the exemplars. In that case, even though there are other reasons, the landlord ought to get enhancement of rent. Then on account of this difference between the exemplars and the fields in suit the court will find that the land on which enhancement is sought is inferior to the exemplar field and therefore the enhancement which the landlord ought to get cannot be secured by him. I therefore say that it is most dangerous to fix as exemplars fields which are very unlikely under the ordinary course of events to remain of constant quality and which in certain circumstances may show a violent variation. That is the reason why I beg to oppose the motion.

Khan Bahadur Maulvi Fasih-ud-din: I give my whole-hearted support to the amendment of my friend, Mr. Mehrotra. I have heard with rapt attention the learned arguments which have been brought forward by Mr. Lane. Certainly I admit it is a very technical subject, but all the rules of the settlement are based on strong common sense. I think that the sum total of Mr. Lane's arguments is that the standard rates should be adhered to for the purposes of enhancement of rent at the time of the roster year, and he also suggests that the selection of particular fields of average quality of particular soil is rather dangerous for the simple reason that, as he says, these fields may deteriorate by the deposit of sand or may be improved on account of canal and other cause.

And he says that in that case these fields cannot serve as a very sure and certain guide for the purposes of the enhancement of rent. I am sorry to say that I cannot agree with him when he says that the standard rates are always the sure tests for increasing or decreasing rents of the fields included in a particular holding without any modification and I believe that Mr. Lane was aware of this fact when he said that the settlement officer or the special roster officer had to fix village rates which were suitable for a particular village. When that is the case, then I do not see any reason why even these village rates should be applicable to particular holdings. In my own opinion it is always very safe to have some sort of fields for guidance. If those fields have deteriorated or if they have been largely improved by some cause or other, then the officer who is in charge of enhancement work can look to that, and he will not be bound to go by the rents which are paid by those exemplar fields. The clause as it stands, I believe, does not preclude a special officer from using the standard rates or village rates if he chooses to do so. This particular clause which lays down that the special officer will also select particular fields or groups of fields as exemplars being specially suitable for the purposes of enhancement, I think, is a very good plan, and it will help the settlement officer to arrive at a very correct conclusion about the real enhancement which is to be given. If it, however, means that the special officer is precluded from using standard or village rates, then I would certainly agree with Mr. Lane that it is rather risky to select only particular fields or group of fields for the guidance of the special officer. But this precaution which is contained in this section is an additional safeguard and I am distinctly of the opinion that the standard or the village rates are not always a safe guide, specially in the case of individual plots or holdings. They

may apply suitably to particular holdings or they may not. The soil demarcation, as Mr. Lane has admitted, sometimes includes all sorts of fields. It is possible that it may include certain fields which are below the average and certain fields which are very much above the average, and for that reason, the only safeguard in the case of the application of these circle or village rates is also to have before one's eye particularly suitable and particularly representative fields. I absolutely see no reason why this clause should be eliminated. It does not do any harm to anybody. It is only an additional safeguard, so far as I understand the section, for the guidance of the special officer, and all the arguments that have been brought forward by Mr. Lane are only made to justify the village or standard rates. But they do not go to show that because the standard rates are presumed to be correct and may be correct, it is necessary that they do apply, and they will always apply, correctly to every individual field. And for that reason I think the safeguard that has been laid down in this sub-clause is a very good safeguard, and it is not necessary to delete it.

Hon'ble Sir Sam O'Donnell: If Khan Bahadur Maulvi Fasih-uddin had not spoken, I was going to say that there is not a single officer with settlement experience who is in favour of this particular provision. Why he has elected to champion it I cannot understand. It is not only the officers who have worked the roster year system in Oudh who are opposed to it and have stated that it is entirely unworkable; it is also a fact that every settlement officer, with the exception of the honourable member, whose experience is perhaps a little out-of-date, is convinced that this provision is entirely unnecessary and, as I said, unworkable. The roster year officer prepares circle rates and then modified village rates to suit the conditions of particular villages. What is the use, in addition to these rates, of selecting certain fields, the condition of which may change within four or five years, and endeavouring to complicate the decision of the court by making it refer to what may be entirely unreliable as a guide? I do not know why there is any opposition to the removal of this clause. We stand to gain nothing by it. If we have proposed to amend the present law on this point it is simply because practical experience has shown that it is unnecessary and unworkable. In a matter of this kind in which technical experience is important, it is not perhaps too much to ask the Council to accept our view of the matter. As I said, we gain nothing by it except that the task of the courts will be simplified and that decisions will be less liable to go wrong. But that is the only reason. When we prepared this Bill we had not the slightest idea that there would be any opposition to this particular proposal.

Rai Bahadur Thakur Mashal Singh: The amendment has not been fully explained by the mover. In the Bill clause 5 stands. The motion of the honourable member is that clause 5 should be omitted. What is section 51D, sub-clause (5) of the Oudh Rent Act? Now the mover of the amendment has proposed that this provision in the present Bill be omitted. The effect of it will be that clause (5) of 51D will be retained as it is in the Oudh Rent Act. Section 51D gives certain instructions to the roster officer. In those instructions, one is that he will classify the soil if such classification is not made at the time of the settlement and so forth, and in the fifth clause it is said that the special

[Rai Bahadur Thakur Mashal Singh.]

officer shall record for the purpose of comparison fields and groups of fields in each circle with average fields of a particular class of soil. If this will be made then there will be on the record something to show that for these reasons such rates have been arrived at. That for the purpose of comparison of fields or groups of fields in each circle which are fields of a particular class of soil, unless you make this comparison none will be able to make out the head or tail of those rates of the roster year. Well this was proposed only some four years ago, but now it has been thought proper that it should be omitted. Up to this time Government has been acting on the principle of give and take. But now I find that *len* is there on the side of Government, but *den* is conspicuous by its absence. Government has not lost anything by the retention of this clause in the Act. I do not think that there can be any reason to oppose the amendment.

With these words I support the amendment of Rai Bahadur Lala Mathura Prasad Mehrotra.

Rai Bahadur Lala Mathura Prasad Mehrotra : I have nothing to add.

Hon'ble Sir Sam O'Donnell : Rai Bahadur Thakur Mashal Singh Sahib, I think, has not completely understood the roster year system. I do not blame him for that because, as I said before, it is a difficult matter and that is a very good reason for asking honourable members to accept the views of experts on this matter. He seems to suppose that the roster year rates are obtained from exemplar fields. They are not obtained from exemplar fields. They are obtained under the preceding clauses of this section.

Question put, that clause 5 stand part of the Bill.

The House divided : Ayes, 19 ; Noes, 34.

Ayes.

Hon'ble Sir Sam O'Donnell.
Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.
Mr. G. B. Lambert.
Mr. E. A. H. Blunt.
Kunwar Jagdish Prasad.
Sir Ivo Elliott.
Mr. P. H. Tillard.
Mr. H. A. Lane.
Mr. R. L. Yorke.

Mr. R. Barn.
Mr. A. W. Pim.
Mr. B. J. K. Hallows.
Mr. E. L. Norton.
Mr. H. G. Billson.
Mr. R. J. S. Dodd.
Colonel A. W. R. Cochrane.
Mr. A. H. Mackenzie.
Mr. M. F. P. Herchenroder.
Babu Khem Chand.

Noes.

Mr. H. David.
Babu Narayan Prasad Arora.
Babu Mohan Lal Sawsona.
Babu Jai Narayan Chaudhri.
Rai Jagdish Prasad Sahib.
Lala Babu Lal.
Rai Bahadur Babu Ram Nath : hargava.
Lala Dhakan Lal.
Babu Nemi Saran.
Chaudhri Badan Singh.
Rao Sahib Kunwar Sardar Singh.
Thakur Sadho Singh.
Pandit Jhanni Lal Pande.
Raja Narayan Pratap Singh.
Pandit Yajna Narayan Upadhyaya.
Bhaya Hanumat Prasad Singh.
Pandit Govind Ballabh Pant.
Babu Ram Chandra Sinha.
Rai Bahadur Thakur Mashal Singh.
Babu Sita Ram.

Khan Bahadur Mr. Muhammad Aslam Saifi.
Khan Bahadur Chaudhri Amir Hasan Khan.
Maulvi Muhammad Obaid-ur-Rahman Khan.
Khan Bahadur Shaikh Masud-uz-Zaman.
Khan Bahadur Saiyid Muhammad Ashiq Husain.
Khan Bahadur Maulvi Fasih-ud-din.
Khan Bahadur Maulvi Muhammad Fasil-ur-Bahman Khan.
Khan Bahadur Hakim Mahbub Ali Khan.
Khan Bahadur Munshi Siddiq Ahmed.
Qazi Habib Ashraf.
Khan Bahadur Chaudhri Muhammad Rashid-ud-din Ashraf.
Bai Bahadur Lala Behari Lal.
Rai Bahadur Lala Mathu Prasad Mehrotra.
Raja Jagannath Baksh Singh.

CLAUSE 6.

Substitution of new sub-section for sub-section (1) of section 51G of Act XXII of 1886.

6. For sub-section (1) of section 51G of the said Act, the following sub-section shall be substituted, namely:—

“(1) In every suit or proceeding in which a court has to determine the fair and equitable rate of rent payable by a tenant, the court shall determine such rate in accordance with the sanctioned rates and records, unless for special reasons to be recorded the court sees cause to depart from them.”

Babu Sita Ram : I beg to move that clause 6 be deleted.

This amendment is consequential on the deletion of clause 5, because section 51G as it stands now says:—“In every suit or proceeding in which a court has to determine the fair and equitable rate of rent payable by a tenant, the court shall determine such rate in accordance with the sanctioned rates and records unless it is proved that in consequence of any material superiority or inferiority the holding has previously borne a higher or lower rent than the average fields recorded as such under sub-section (5) of section 51D.” The Bill proposes to substitute the following clause for this section:—“In every suit or proceeding in which a court has to determine the fair and equitable rate of rent payable by a tenant, the court shall determine such rate in accordance with the sanctioned rates and records, unless for special reasons to be recorded the court sees cause to depart from them.” Under the existing law the court, in determining the fair and equitable rents has to look to the rents of exemplar fields; and this Council has been fit to retain that clause. Therefore, when that clause has been retained, the rates in future should also be determined according to the existing section 51G and not according to the section as has been proposed in clause 6 of the Bill. My humble submission therefore is that when you have retained clause 51D(5) it seems necessary that you should support the deletion of clause 6 and the retention of section 51G. This is what I have got to submit in respect of this amendment.

Khan Bahadur Maulvi Fasih-ud-din : I am sorry to say that I have to oppose this amendment. I supported the former amendment for the retention of the group of exemplar fields on the ground that they serve as a very good test for, or as a very good check upon, the village or standard rates. But the amendment, if it is carried, will result in this, that the whole of the roster system will be nullified and the standard rates will be rendered useless and inoperative when the exemplar fields are solely to be relied upon. This amendment goes rather too far, and if it is to be adopted, it would mean the nullification of the entire roster system which I beg to oppose.

Mr. H. A. Lane : I am very pleased to find that Khan Bahadur Maulvi Fasih-ud-din agrees with the views which I have to express on this point, although he disagreed with me about sub-clause (5) clause 51D. I think it is only necessary to read the existing clause 51G to come to the conclusion that had very much better be altered. The change which is proposed in the draft Bill agrees with the first half of the sub-clause, which says:—“In every suit or proceeding in which a court has to determine the fair and equitable rate of rent payable by a tenant, the court shall determine such rate in accordance with the sanctioned rates.” There is no difference there between the Act as

[Mr. H. A. Lane.]

it stands and the wording of the Bill. The Act goes on to say:—"unless it is proved that in consequence of any material superiority or inferiority the holding has previously borne a higher or lower rent than the average fields recorded as such under sub-section (5) of section 51D." Well, Sir, the drafting of this alone is sufficient to condemn it. The landlord or the tenant may be able to prove that the field does bear higher or lower rates than the exemplar field. But how is he going to prove that the difference in rent is due to the material superiority or inferiority of the holding. There may be any number of reasons, there may be relationship or one hundred and one things. But what evidence is he going to produce in order to show that the variation in rent is in consequence in the difference in the quality of the holding. That, I maintain, is quite impossible. There can be no specific evidence to prove it. Furthermore, if this section of the Act is maintained, it means that the present procedure for local inspection by district courts will continue to be necessary for the purpose of determining the rent. Every revenue officer knows—and I expect that is why Khan Bahadur Maulvi Fasih-ud-din spoke for the clause as it appears in the Bill—that this business of local inspection is a sheer waste of time and produces nothing but unreliable and unsatisfactory results which in a very large percentage of cases are returned from appellate courts for re-trial. I hope, Sir, that the Council will reject this amendment. The clause as drafted by the Select Committee simply says:—"the court shall determine such rate in accordance with the sanctioned rates and records, unless for special reasons to be recorded the court sees cause to depart from them." It is desirable that the court should be given reasonable discretion in this matter. The clause in the Bill allows this discretion and in practice the clause in the draft Bill will give very much better results than the clause as it stands in the present Oudh Rent Act.

Hon'ble Sir Sam O'Donnell: Now that Khan Bahadur Maulvi Fasih-ud-din Sahib has given his valuable support I think the Council will agree that this particular provision in the present Oudh Rent Act is unsound. They will have to admit that all the evidence is entirely against the existing provisions and in favour of the proposal in the Bill. I hope the Council will accept it.

Babu Sita Ram: The arguments that have been advanced against the amendment are that the working of the present section 51G, gives unsatisfactory and unreliable results and that the procedure is cumbersome. My humble submission is that the legislature in its wisdom four years back thought it proper to enact this clause. There has not been sufficient experience in the working of this clause to show that difficulty has been felt by revenue courts in following the procedure laid down by this section. The revenue reports do not disclose any such difficulty. The exemplar fields are quite necessary in determining the rents that should be fixed for a holding the rent of which is in dispute, and if the revenue officer in determining the rents for a holding takes the rents of the exemplar fields into consideration as provided for in this clause, he is resorting to another safeguard. The intention of the exemplar fields is to determine a fair and equitable rent for a holding, and my submission is that this motion should be supported.

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Hon'ble Sir Sam O'Donnell: The only argument advanced by the honourable member, who, I think, will admit that he himself is not familiar with the working of the roster system, is that we have not had sufficient experience of it. We have not only the experience of three districts in Oudh, in which roster rates have been prepared, but we have also the experience of settlements, in which the roster year system is applied. I therefore ask the Council to accept our statement that this provision is unsatisfactory and unworkable.

Question put, that clause 6 stand part of the Bill.

The House divided: Ayes, 25; Noes, 31.

Ayes.

Hon'ble Sir Sam O'Donnell.

Hon'ble Lieut. Nawab Muhammad Ahmad Sa'id Khan.

Mr. G. B. Lambert.

Mr. E. A. H. Blunt.

Kunwar Jagdish Prasad.

Sir Ivo Elliott.

Mr. P. H. Tillard.

Mr. H. A. Lane.

Mr. R. L. Yorke.

Mr. R. Burn.

Mr. A. W. Pim.

Mr. E. J. K. Hallows.

Mr. E. L. Norton.

Mr. H. G. Billsou.

Mr. R. J. S. Dodd.

Colonel A. W. R. Cochrane.

Mr. A. H. Mackenzie.

Mr. M. F. P. Herchenroder.

Mr. H. David.

Babu Khem Chand.

Pandit Nanak Chand.

Khan Bahadur Hafiz Hidayat Husain.

Dr. Shafa'at Ahmad Khan.

Mr. Tracey Gavin Jones.

Rai Bahadur Babu Vikramajit Singh.

Noes.

Babu Narayan Prasad Arora.

Babu Mohan Lal Saxena.

Babu Jai Narayan Chaudhri.

Rai Jagdish Prasad Sahib.

Lala Babu Lal.

Rai Bahadur Babu Ram Nath Bhargava.

Lala Dhukan Lal.

Babu Nemi Saran.

Chaudhri Badan Singh.

Rao Sahib Kunwar Sardar Singh.

Thakur Sadho Singh.

Pandit Jhanni Lal Pande.

Raja Narayan Partap Singh.

Pandit Yajna Narayan Upadhyay.

Bhaya Hanumat Prasad Singh.

Pandit Govind Ballabh Pant.

Babu Ram Chandra Sinha.

Rai Bahadur Thakur Mashal Singh.

Babu Sita Ram.

Khan Bahadur Mr. Muhammad Aslam Saifi.

Rao Sahib Abdul Hameed Khan.

Khan Bahadur Chaudhri Amir Hasan Khan.

Maulvi Muhammad Obaid-ur-Rahman Khan.

Khan Bahadur Saiyid Muhammad Ashiq Husan.

Khan Bahadur Maulvi Muhammad Fasil-ur-Rahman Khan.

Khan Bahadur Hakim Malibub Ali Khan.

Khan Bahadur Munshi Siddiq Ahmad.

Khan Bahadur Chaudhri Muhammad

Rashid-ud-din Ashraf.

Rai Bahadur Lala Behari Lal

Rai Bahadur Lala Mathura Prasad

Mehrotra.

Raja Jagannath Baksh Singh.

CLAUSES 7 AND 8.

Question, that clauses 7 and 8 stand part of the Bill, put and agreed to.

CLAUSE 1.

Short title

1. This Act may be called the Oudh Rent (Amendment) Act 192 .

Hon'ble Sir Sam O'Donnell: I beg to move that in clause 1 the brackets and figure (1) at the beginning be inserted and in line 2 of the clause "1926" be substituted for "1922", and further a second sub-clause be added as follows:—

"(2) It shall come into force on such day as the Local Government may, by notification in the Gazette appoint in this behalf."

Question, that these amendments be made, put and agreed to.

Question, that clause 1 stand part of the Bill, put and agreed to.

PREAMBLE.

Question, that the preamble stand part of the Bill, put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that in consequence of the omission of clauses 5 and 6, clauses 7 and 8 be re-numbered as clauses 5 and 6 respectively.

Question put and agreed to.

Hon'ble Sir Sam O'Donnell: I beg to move that the Bill, as amended, be passed.

Question put and agreed to.

The Council was then adjourned till Monday, August 2.

